ALLIANCE DEFENDING FREEDOM

ALLIANCE DEFENDING FREEDOM
Contract of Legal Representation

1. Alliance Defending Freedom (ADF) is a civil liberties education and legal defense organization that provides legal representation.

2. Phil Bryant, Governor of Mississippi, and John Davis, Executive Director of the Mississippi Department of Human Services, (hereinafter Clients) hereby retain Alliance Defending Freedom, to represent them as Defendants in *Barber v. Bryant*, Cause Nos. 3:16-CV-417-CWR-LRA and 3:16-CV-442-CWR-LRA, which is currently pending in the Federal District Court for the Southern District of Mississippi. Alliance Defending Freedom is co-counsel in the case with D. John Sauer of James Otis Law Group and his colleagues. Mr. Sauer and his colleagues are lead counsel in the case.

3. This legal representation will be provided at no charge to the Clients and Alliance Defending Freedom will also pay for all individual expenses incurred by Alliance Defending Freedom during this representation, such as travel, court admission fees, and administrative office costs. Alliance Defending Freedom will not pay any other expenses related to the representation except by mutual consent of the parties to this contract and only if the agreement is reduced to writing and duly executed by both parties.

4. Clients will be truthful at all times and reveal all information necessary and relevant to the legal representation and shall fully cooperate in all legal proceedings. If Alliance Defending Freedom believes, in its sole judgment, that the Clients are not cooperating fully in the legal representation, the Clients agree that Alliance Defending Freedom may withdraw from the case in accordance with applicable canons of professional conduct.

5. Clients may terminate this representation without cause at any time. Further, Clients shall retain ultimate control over the course and conduct of this case. If Alliance Defending Freedom believes, in its sole judgment, that the Clients' goals or course and conduct have become incompatible with the core principles of Alliance

Defending Freedom, the Clients agree that Alliance Defending Freedom may withdraw from the case in accordance with applicable canons of professional conduct.

6. Clients understand that the ability of Alliance Defending Freedom to provide pro-bono legal representation is directly connected to the ability of Alliance Defending Freedom to inform its supporters about the work done by Alliance Defending Freedom. Clients agree to cooperate with Alliance Defending Freedom in the publicizing of non-privileged and non-confidential information relating to this representation. All such communications shall be made pursuant to applicable canons of professional conduct. Clients agree to allow Alliance Defending Freedom to use relevant, non-confidential information in materials intended to communicate with supporters of Alliance Defending Freedom and in furtherance of Alliance Defending Freedom's mission. Alliance Defending Freedom understands that this case raises high-profile public-relations issues for the Clients and agrees to cooperate with the Clients concerning the content of materials intended to communicate to the public regarding this representation.

7. Clients have had an opportunity to seek independent legal counsel and to seek clarification from Alliance Defending Freedom of any terms set forth in this Contract.

The foregoing Contract is understood, accepted, and agreed to this 8th day of July, 2016.

Phil Bryant, Governor of Mississippi

Alliance Defending Freedom Attorney:
James A. Campbell

John Davis, Executive Director of the Mississippi Department of Human Services

Governor Interns

From: Casey Mattox <cmattox@adflegal.org>
Sent: Tuesday, August 25, 2015 10:08 AM
To: drew.snyder@governor.ms.gov
Subject: RE: Medicaid

Also note the Hattiesburg facility is only open 12 hours per week. M/W/F

http://www.plannedparenthood.org/health-center/mississippi/hattiesburg/39401/hattiesburg-center-4078-90330

ALLIANCE DEFENDING FREEDOM

Casey Mattox
Senior Counsel
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202-888-7625 (Direct Dial)
202-347-3622 (Fax)
cmattox@ADFlegal.org
ADFlegal.org
Not Licensed in DC
Practice Limited to Federal Court

From: Casey Mattox
Sent: Tuesday, August 25, 2015 10:34 AM
To: 'drew.snyder@governor.ms.gov'
Subject: Medicaid

Please see attached. More info to follow later today.

Casey

Governor Interns

From: Casey Mattox <cmattox@adflegal.org>
Sent: Thursday, August 27, 2015 6:20 PM
To: Casey Mattox; drew.snyder@governor.ms.gov
Subject: RE: Medicaid

Drew,

A recent development in the same affiliate in Mobile. Feel free to give me a call to discuss the import at 703-969-6801.

http://www.lifenews.com/2015/08/27/planned-parenthood-caught-not-reporting-rape-of-14-year-old-failed-to-report-another-rape/?utm_content=buffere8150&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

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Subject: Medicaid

Please see attached. More info to follow later today.

Casey

Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Wednesday, April 6, 2016 3:07 PM
To: Drew Snyder
Subject: RE: invitation
Attachments: 2016 ADF Academy invitation.pdf

Hi Drew,

Congrats on a great victory in MS! Y'alls courage on such an important issue is inspiring. Please don't hesitate to let us know if there's anything we can do to support you all in the aftermath or garner support for the Gov. We want him to know how much he's appreciated despite the very loud and vocal minority and business threats.

I also wanted to add with regards to the Summit this summer that the purpose of the Summit is to consider strategic responses to current challenges and explore opportunities to further religious freedom in the courts. Although the guest list is confidential, you will no doubt be among friends. Also, ADF will cover the cost of lodging, registration, most meals, and provide a stipend that covers the bulk of the travel expenses for the participant.

I imagine your wife may not want to travel at that point in time, but if she does, she is more than welcome. The agenda is still being finalized, but I have been assured that some time to enjoy the resort and the locale will be built into the schedule. ☺

Best,
Kellie

From: Drew Snyder [mailto:Drew.Snyder@governor.ms.gov]
Sent: Monday, March 28, 2016 12:11 PM
To: Kellie Fiedorek
Subject: Re: invitation

That sounds like a great gathering. When is registration deadline? My wife is expecting our first child in late July, so I wanted to talk to her before committing.

Sent from my iPhone

On Mar 28, 2016, at 9:43 AM, Kellie Fiedorek <KFiedorek@adflegal.org> wrote:

> Hi Drew,
>
> Hope you're doing well! We wanted to extend this invitation to you to attend a special gathering of thought leaders on religious freedom this summer. Happy to chat more by phone if that would be helpful. Would love for you to be able to attend.
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> Best,
> Kellie
>
> <image001.jpg>

You are cordially invited to the Religious Freedom Summit at this summer's 40th ADF Academy session. This Summit will bring together prominent legal advocates, scholars, cultural commentators, business executives, and church leaders to examine the current state of religious freedom. And together, we will develop legal and cultural strategies to allow freedom to flourish in the United States and around the world.

<image002.jpg>

We hope you will join us.
ADF will cover the cost of each attendee's registration, lodging, and scheduled meals.

To confirm your attendance or for additional information, please contact Johanna Seiter at ***JSeiter@ADFlegal.org****.*

<image003.jpg>

<logoa49e88>

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KFiedorek@ADFlegal.org
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40th

ALLIANCE DEFENDING FREEDOM

ACADEMY

2016

FEATURING AN INVITATION-ONLY

RELIGIOUS FREEDOM SUMMIT

You are cordially invited to the Religious Freedom Summit at this summer's 40th ADF Academy session. This Summit will bring together prominent legal advocates, scholars, cultural commentators, business executives, and church leaders to examine the current state of religious freedom. And together, we will develop legal and cultural strategies to allow freedom to flourish in the United States and around the world.

MAUI, HAWAII | JUNE 20–24, 2016

We hope you will join us.

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*To confirm your attendance or for additional information, please contact Johanna Seiter at **JSeiter@ADFlegal.org**.*

ALLIANCE DEFENDING FREEDOM

FOR FAITH & JUSTICE

15100 N. 90th Street, Scottsdale, Arizona 85260

Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Monday, March 28, 2016 5:16 PM
To: Drew Snyder
Subject: Re: invitation

Hi Drew,

That's totally fine. Do you think you'd know by early/mid April? We're trying to be flexible for those in the public sector. Congrats on the new baby! Hope his/her birth will allow you to come :)

Unrelated, I know there's a RF bill likely headed your way. Is there anything we can be doing to help you and support y'all there?

Best,
Kellie

On Mar 28, 2016, at 12:11 PM, Drew Snyder <Drew.Snyder@governor.ms.gov> wrote:

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Governor Interns

From: Drew Snyder <Drew.Snyder@governor.ms.gov>
Sent: Monday, March 28, 2016 11:11 AM
To: Kellie Fiedorek
Subject: Re: invitation
Attachments: image001.jpg; image002.jpg; image003.jpg; logoa49e88

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Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Monday, April 18, 2016 4:01 PM
To: Drew Snyder
Subject: RE: invitation

Hi Drew,

Hope you're doing well—just wanted to check in with you about the Religious Freedom Summit. We would love for you to be there, but I know that your wife might be nervous so close to her due date. Just let me know—if you could let us know by mid-week, that would be great. After mid-week, we can't guarantee a room as we're filling up quickly.

Also, unrelated, if there's anything at all that we can do or help orchestrate to support the Gov and Mississippi, please do let me know. We want him to know how thankful millions of Americans are across the country and in Mississippi for his courage.

Best,
Kellie

From: Drew Snyder [mailto:Drew.Snyder@governor.ms.gov]
Sent: Monday, March 28, 2016 12:11 PM
To: Kellie Fiedorek
Subject: Re: invitation

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ADF will cover the cost of each attendee's registration, lodging, and scheduled meals.

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KFiedorek@ADFlegal.org
ADFlegal.org

Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Monday, April 4, 2016 2:14 PM
To: Whitney Lipscomb
Subject: RE: Governor Bryant Signing Statement for HB 152

Hi Whitney,

Just wanted to check in and make sure you received my e-mail on Friday, and see if there's anything else we can be helpful with.

Best,
Kellie

From: Whitney Lipscomb [mailto:Whitney.Lipscomb@governor.ms.gov]
Sent: Friday, April 01, 2016 6:38 AM
To: Kellie Fiedorek
Subject: RE: Governor Bryant Signing Statement for HB 152

Great, thanks.

From: Kellie Fiedorek [mailto:KFiedorek@adflegal.org]
Sent: Friday, April 01, 2016 8:33 AM
To: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
Subject: Re: Governor Bryant Signing Statement for HB 152

Hi Whitney,
Just wanted to let you know I received this and will have a draft to you shortly.
Best,
Kellie

ALLIANCE DEFENDING FREEDOM

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On Mar 31, 2016, at 5:30 PM, Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov> wrote:

> Kellie,
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> Thank you for taking the time to speak with me and agreeing to help provide some language for Governor Bryant's Signing Statement. Attached is the beginning of the Signing Statement for HB 1523

along with a Signing Statement he has done in the past. Also you will find information related to HB 1523 here. Thanks again for your help.

Best,
Whitney

Whitney H. Lipscomb
Counsel
Office of Governor Phil Bryant
P.O. Box 139
Jackson, MS 39205
(601) 576-2026
whitney.lipscomb@governor.ms.gov

<HB 1523 Signing Statement.docx>

<Senate 2687 Bill Signing Statement.pdf>

Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Friday, April 1, 2016 9:35 AM
To: Whitney Lipscomb
Subject: RE: Governor Bryant Signing Statement for HB 152
Attachments: HB 1523 Signing Statement 2.docx; HB 1523 Signing Statement 1.docx

Hi Whitney,

I've sending two different drafts. We looked through a number of Gov. Bryant's signing statements and tried to use his voice. Please feel free to pull from either one that is most helpful to you and your boss. Some statements might be better for his press release. Let me know how else we can be helpful, and if you need anything else today. We're here to serve.

Best,
Kellie

From: Whitney Lipscomb [mailto:Whitney.Lipscomb@governor.ms.gov]
Sent: Friday, April 01, 2016 6:38 AM
To: Kellie Fiedorek
Subject: RE: Governor Bryant Signing Statement for HB 152

Great, thanks.

From: Kellie Fiedorek [mailto:KFiedorek@adflegal.org]
Sent: Friday, April 01, 2016 8:33 AM
To: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
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Kellie,

Thank you for taking the time to speak with me and agreeing to help provide some language for Governor Bryant's Signing Statement. Attached is the beginning of the Signing Statement for HB 1523 along with a Signing Statement he has done in the past. Also you will find information related to HB 1523 here. Thanks again for your help.

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<HB 1523 Signing Statement.docx>

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April 1, 2015

TO THE MEMBERS OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES AND THE MISSISSIPPI STATE SENATE:

GOVERNOR'S SIGNING STATEMENT FOR HOUSE BILL1523

I am signing House Bill 1523, "AN ACT TO CREATE THE "PROTECTING FREEDOM OF CONSCIENCE FROM GOVERNMENT DISCRIMINATION ACT"; TO PROVIDE CERTAIN PROTECTIONS REGARDING A SINCERELY HELD RELIGIOUS BELIEF OR MORAL CONVICTION FOR PERSONS, RELIGIOUS ORGANIZATIONS AND PRIVATE ASSOCIATIONS; TO DEFINE A DISCRIMINATORY ACTION FOR PURPOSES OF THIS ACT; TO PROVIDE THAT A PERSON MAY ASSERT A VIOLATION OF THIS ACT AS A CLAIM AGAINST THE GOVERNMENT; TO PROVIDE CERTAIN REMEDIES; TO REQUIRE A PERSON BRINGING A CLAIM UNDER THIS ACT TO DO SO NOT LATER THAN TWO YEARS AFTER THE DISCRIMINATORY ACTION WAS TAKEN; TO PROVIDE CERTAIN DEFINITIONS; AND FOR RELATED PURPOSES."

I am a staunch supporter of the freedom of conscience, a right that our state and nation have long protected. I also believe in economic freedom and have worked tirelessly to make Mississippi a place where businesses of all sizes are free to thrive, as we have seen though the billions of dollars those businesses have invested here in the past few years.

This bill preserves the freedom of all Mississippians to peacefully live, worship, and work according to their religious or moral beliefs. It ensures that the government does not discriminate against churches, and other non-profit organizations, such as adoption agencies, schools, and charities, by denying them tax exemptions, contracts, or licenses simply for following their deeply held beliefs. It also maintains an environment that is friendly to businesses by securing their freedom to operate consistent with their convictions.

I want to thank our legislature for crafting a bill that affirms that the freedom of conscience and economic freedom will remain the foundation for building a stronger, more prosperous state.

April 1, 2015

TO THE MEMBERS OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES AND THE MISSISSIPPI STATE SENATE:

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This bill preserves the freedom of all Mississippians to peacefully live, worship, and work according to their religious or moral beliefs about marriage. It ensures that the government does not discriminate against or punish churches, and other organizations, such as adoption agencies, schools, and charities, by denying them tax exemptions, contracts, or licenses simply for following their deeply held beliefs. It also safeguards against the government forcing citizens to surrender free speech and religious freedom in order to run their businesses. We should respect a diversity of beliefs in our state, and not allow government to punish some of our citizens who have different views.

Furthermore, efforts like these are essential to the continued economic freedom of businesses across our State. Businesses thrive where the freedom of individuals and employers to operate according to their convictions is protected. In the two years since Mississippi enacted the Religious Freedom Restoration Act, numerous major corporations have expanded in our state, representing billions of dollars of new investment. This bill protects the freedom of individuals to make personal choices without government intervention, and will positively impact our State's reputation.

Freedom of conscience is a precious human right, and preserving these cherished freedoms is important to me. People throughout world history under every sort of regime have been "free to believe." What makes America unique is our freedom to peacefully live out those beliefs, and our Constitution protects that freedom. The real test of liberty is what happens when we disagree. I am therefore signing House Bill 1523 because I am a champion of freedom and I want to ensure that in Mississippi tolerance remains a two way street.

Governor Interns

From: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
Sent: Friday, April 1, 2016 8:38 AM
To: Kellie Fiedorek
Subject: RE: Governor Bryant Signing Statement for HB 152

Great, thanks.

From: Kellie Fiedorek [mailto:KFiedorek@adflegal.org]
Sent: Friday, April 01, 2016 8:33 AM
To: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
Subject: Re: Governor Bryant Signing Statement for HB 152

Hi Whitney,
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Best,
Kellie

ALLIANCE DEFENDING FREEDOM

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<HB 1523 Signing Statement.docx>

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FOR FAITH FOR JUSTICE

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Governor Interns

From: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
Sent: Tuesday, April 5, 2016 3:10 PM
To: Kellie Fiedorek
Subject: RE: Governor Bryant Signing Statement for HB 152

Hey Kellie,

Thank you for your help. I am sorry I did not respond. It has been crazy. We ended up using some of your language and tweaking a bit. Thanks again.

From: Kellie Fiedorek [mailto:KFiedorek@adflegal.org]
Sent: Monday, April 04, 2016 2:14 PM
To: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
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Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Wednesday, February 3, 2016 9:17 AM
To: Drew Snyder
Subject: RE: amicus opportunity in Stormans v. Weisman

Y'all able to sign on? Here's the latest list of states: AL, MI, MT, NE, NV, SC, UT, TX, OK and WV.

Thanks,
Kellie

ALLIANCE DEFENDING FREEDOM

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From: Kellie Fiedorek
Sent: Monday, February 01, 2016 5:41 PM
To: 'Drew Snyder'
Subject: amicus opportunity in Stormans v. Weisman

Hi Drew,

I just wanted to make sure you had seen the attached States' amicus brief supporting cert in Stormans. AZ took lead in drafting, and so far MT, UT, and AL have joined (waiting to hear back from other states). I believe it is circulating within NAAG as well, but wanted to flag it for you. Is this something your office would want to sign on to, or could you forward to AG's office? It would be great if Mississippi joined.

You may be interested to know that the West Virginia Pharmacists Association has agreed to join a separate brief supporting certiorari in this case. That brief is being filed on behalf of 25+ state pharmacy associations (Mississippi has indicated a willingness to join, but has yet to return an engagement letter) and 4 national organizations, including the American Pharmacists Association and the National Alliance of State Pharmacists Associations. The pharmacists brief demonstrates that Washington's regulation is grossly out of step with industry standards and threatens the rights of pharmacists.

The brief must be filed by Friday, Feb 5, and I assume that AZ will add states to their brief until sometime late on Wednesday when it goes to the printer.

Thanks for considering this opportunity. Please let me know if you have any questions, or would like additional info. My cell is 202-905-6197.

Best,

Kellie

Governor Interns

From: Drew Snyder <Drew.Snyder@governor.ms.gov>
Sent: Monday, August 17, 2015 6:29 PM
To: kfiedorek@adflegal.org; Will Simpson
Subject: Planned Parenthood Funding Questions
Attachments: PPDefundingMemo.pdf

Kellie – Thanks for reaching out. I've copied Will Simpson, counsel and health care policy advisor. Will is the most knowledgeable person in the Governor's Office on this topic. I don't know Will's exact schedule for this week. Why don't you propose a couple of potential times to talk on Tuesday or Wednesday and one of us will respond to you.

Will – Kellie and Austin Nimocks filed an amicus brief on behalf of Governor Bryant in the Czekala-Chatham same-sex divorce case before the MSSC and have experience litigating against Planned Parenthood.

Thanks, Drew

From: Kellie Fiedorek [mailto:KFiedorek@adflegal.org]
Sent: Monday, August 17, 2015 6:08 PM
To: Drew Snyder
Subject: touching base

Hi Drew,

I'm not sure if you remember me—I worked with Austin Nimocks and Jack Wilson when we served as amicus counsel for Governor Bryant on the same-sex marriage case pending before the Mississippi Supreme Court. I wanted to touch base with you on some questions we had pertaining to Planned Parenthood and government funding—have you all looked at the possibility of cutting any of their government funding? Would you have time to chat sometime this week? I thought the attached memo might also be useful to you.

Best,
Kellie

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FOR FAITH FOR JUSTICE

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Redirecting Planned Parenthood Funding Toward Better Public Health

A dozen states have denied or withdrawn funding to Planned Parenthood Federation of America affiliates. Ten states did so in 2011,[1] and two more have done so to date in 2015. In August, New Hampshire's Executive Council, which had voted to defund Planned Parenthood of Northern New England in 2011, again voted not to renew state contracts with Planned Parenthood.[2] The governors of Louisiana and Alabama announced they were terminating the Medicaid provider agreement for the Planned Parenthood affiliates in their states.[3] Planned Parenthood and its affiliates have been subjected to heightened scrutiny in the wake of a congressional investigation into apparent fraud, waste and abuse of taxpayer funding by Planned Parenthood affiliates[4] and the broadcast of undercover videotapes that appear to show Planned Parenthood officers discussing illegal means of circumventing fetal tissue procurement laws.[5] As a result of these developments, Alliance Defending Freedom (ADF) and its allies have received inquiries regarding federal and state funding streams for Planned Parenthood affiliates and possible avenues of reducing or eliminating the flow of taxpayer funding to America's largest abortion provider.[6]

State Authority Over Healthcare Funding

The U.S. Supreme Court has affirmed that state governments have "a legitimate and substantial interest in preserving and promoting fetal life."[7] To further that end, states have authority to enact laws and policies that encourage childbirth over abortion,[8] including withholding taxpayer subsidies for abortion. As the Court has stated numerous times, "[T]he State need not commit *any* resources to facilitating abortions...,"[9] and "[A] woman's freedom of choice [does not] carr[y] with it a constitutional entitlement to the financial resources to avail herself of the full range of protected

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1 See http://www.sba-list.org/PPScoreboard.

2 Associated Press, "Executive Council rejects Planned Parenthood Funding," Aug. 5, 2015, http://www.seacoastonline.com/article/20150805/NEWS/150809617/101017/NEWS.

3 Office of the Governor of Louisiana, "Governor Jindal Announces the Termination of Medicaid Contract with Planned Parenthood," http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=5061; Letter Dated August 6, 2015 from Alabama Governor Robert Bentley to Planned Parenthood Southeast, Inc., http://lifenews.wpengine.netdna-cdn.com/wp-content/uploads/2015/08/alabama6.png.

4 "ADF congressional report exposes Planned Parenthood's ongoing taxpayer abuse," Alliance Defending Freedom, Jul. 23, 2014, available at http://www.adflegal.org/detailspages/press-release-details/adf-congressional-report-exposes-planned-parenthood-s-ongoing-taxpayer-abuse

5 Center for Medical Progress, http://www.centerformedicalprogress.org/; Alliance Defending Freedom, "Planned Parenthood: The Whole Story," http://www.adflegal.org/planned-parenthood-the-whole-story.

6 This memorandum should not be construed as legal advice. Because federal and state laws governing the funding programs discussed herein vary from state to state, legal counsel licensed in the appropriate jurisdiction should be consulted before taken any action that could affect legal relations under any program.

7 Gonzales v. Carhart, 550 U.S. 124, 145 (2007).

8 Id. at 146.

9 Webster v. Reproductive Health Servs., 492 U.S. 490, 511 (1989) (emphasis supplied), citing Harris v. McRae, 448 U.S. 297 (1980); Poelker v. Doe, 432 U.S. 519, 521 (1977), and Maher v. Roe, 432 U.S. 464 (1977).

choices."[10] Like the Hyde Amendment that prohibits funding for elective abortion in federal programs, a state decision to re-direct family planning funds from elective abortion providers "places no obstacles absolute or otherwise in the pregnant woman's path to an abortion" because she "continues as before to be dependent on private sources for the service she desires."[11]

Federal Funding Streams to Planned Parenthood

Federal funds flow through state and regional health agencies to Planned Parenthood affiliates primarily through several provisions of the Social Security Act: Temporary Assistance to Needy Families (TANF) (Title IV); Maternal and Child Health Services Grants (Title V); the Federal Family Planning Program (Title X); Medicaid Family Planning (Title XIX) and the Social Security Block Grant Program (Title XX).[12] Most of these programs are federal-state block grant programs, but Title X is a discretionary grant program subject to different rules, so it will be considered first.

Title X – The Federal Family Planning Program. The Health & Human Services Office of Population Affairs (HHS/OPA) administers Title X through regional offices that provide grants to family planning programs. Grantees may be state health agencies or regional cooperative public/private agencies.[13] A Title X grantee may discharge its program duties directly or give subgrants to delegate agencies to perform the services; however, when a grantee utilizes delegates, the agency remains solely responsible for the legal and financial aspects of the delegate's progress towards the project's goals.[14]

A number of states have improved access to primary and preventive health care by prioritizing Title X funds first to public health care agencies, then to private agencies that offer primary and

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10 Harris v. McRae, supra n9 at 316.

11 Maher v. Roe, supra n9 at 474 (upholding Medicaid ban on funding non-therapeutic abortions); Planned Parenthood v. Moser, 747 F.3d 814 (10th Cir. 2014) (holding Kansas' prioritization plan for Title X was not unconstitutional); Planned Parenthood v. Suehs, 692 F.3d 343 (5th Cir. 2012) (Texas' prohibition on public funding of providers of elective abortion and entities associated with abortion providers under state Medicaid waiver program did not violate their First Amendment rights of association or equal protection); Planned Parenthood of Mid-Missouri and Eastern Kansas v. Dempsey, 167 F.3d 458, 463 (8th Cir. 1999) (Missouri law employing similar provisions did not impose an unconstitutional condition on abortion providers' receipt of Title X family-planning funds because they could continue "to exercise their constitutionally protected rights through independent affiliates"). The Supreme Court has never held that providers or physicians have a constitutional right to perform abortions—or any medical procedure for that matter. To the contrary, it is clear that the state may regulate physicians' ability to practice medicine, including performing abortions. See Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 884 (1992) (plurality opinion); see also Lambert v. Yellowley, 272 U.S. 581, 596 (1926) ("[T]here is no right to practice medicine which is not subordinate to the police power of the states[.]"); A Woman's Choice-East Side Women's Clinic v. Newman, 305 F.3d 684, 685-86, 693 (7th Cir. 2002).

12 For an overview of the amounts from these programs that go to family planning providers like Planned Parenthood, see Alan Guttmacher Institute, *Public Funding for Contraceptive, Sterilization and Abortion Services*, https://www.guttmacher.org/pubs/Public-Funding-FP-2010.pdf

13 There are currently 35 state health agency grantees and 7 county, municipal or territorial grantees. http://www.hhs.gov/opa/title-x-family-planning/initiatives-and-resources/title-x-grantees-list/title-x-directory-grantees.pdf.

14 U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Population Affairs, Office of Family Planning, *Program Guidelines for Project Grants for Family Planning Services*, ¶ 6.1 (January 2001), http://www.hhs.gov/opa/title-x-family-planning/title-x-policies/program-guidelines/2001-ofp-guidelines-complete.html.

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preventive care. The legality of this approach has been upheld by federal courts numerous times.[15] Thus, when a state health agency is the grantee for Title X funding, it has the lawful authority to determine how to prioritize the distribution of such funding in accordance with its own health care policies.[16]

Federal Social Services Block Grant Funding - Title IV, Title V and Title XX. State agencies engaged in federal partnerships such as the Temporary Assistance to Needy Families Block Grant Program (Title IV), the Maternal and Child Health Services Block Grant Program (Title V), and the Social Services Block Grant Program (Title XX) have authority to administer such grants in a manner that reflects state policy, provided the implementation is congruent with federal mandates. Nothing in the statutes and implementing regulations for these programs prohibits state partners from directing grants to particular types of providers to maximize the effective delivery of preventive healthcare services.[17]

Medicaid - Title XIX. Two federal appeals courts have held that a state may not disqualify Medicaid providers merely because they provide elective abortion.[18] However, state Medicaid agreements are generally considered terminable at will under state law, particularly where there is cause to do so (although the law of the subject jurisdiction where the bill is under consideration should be consulted on this point). Louisiana and Alabama recently invoked such clauses to cancel Medicaid provider agreements with Planned Parenthood affiliates. Because the state-provider contractual relationship is fairly uniform across the country, it is likely that most or all of the states possess similar

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15 Planned Parenthood Association of Utah, et al. v. Schweiker, 700 F.2d 710, 723-24 (D.C. Cir. 1983), quoting 5 U.S.C. § 706(2)(A) (affirming Utah's authority to act as sole grantee for its Title X program through a consolidated grant award from HHS Region VIII; award decision was consistent with "HHS' valid policy of grant consolidation" to "lower administrative costs and assure better delivery of services"). Utah acted pursuant to a Reagan Administration fiscal policy of consolidating Title X grants in the interests of efficiency and in view of limited funds availability. In 1982, consolidated grants had been awarded in 28 states, with 23 consolidated in state agencies and 5 in non-state agencies. HHS remains under that mandate today. 42 U.S.C § 300z-6(a)(4). See also Planned Parenthood v. Sanchez, 403 F.3d 324, 337-38 (5th Cir. 2005) (Texas' "Rider 8" restricting federal family planning funds, including Title X and Title XIX funds, to individuals or entities that did not perform elective abortion procedures did not violate the Supremacy Clause by imposing additional eligibility requirements on its receipt of federal funds that were inconsistent with federal funding laws); Planned Parenthood v. Moser, supra n10; Planned Parenthood v. Dempsey, supra, n10.

16 Such an action would also further the letter and intent of federal law prohibiting subsidization of abortion through the Title X program. See 42 U.S.C. § 300a-6; Rust v. Sullivan 500 U.S. 173, 196-99 (1991) (upholding the constitutionality of HHS regulations prohibiting Title X family planning recipients from including abortion services, referrals or counseling in program activities). "[T]he Government is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purposes for which they were authorized." Id. at 196.

17 Planned Parenthood of Indiana, Inc. v. Indiana Dept. of Health, 699 F.3d 962, 985 (7th Cir. 2012) (upholding state restrictions on federal block grant for STI treatment). See generally 42 U.S.C. §§ 401, 403, 404 (purposes of and limitations on TANF grants); 42 U.S.C. § 704 (purposes of and limitations on Maternal and Child Health Services grants); and 42 U.S.C. §§ 1397, 1397d (purposes of and limitations on Social Services grants).

18 See Planned Parenthood of Indiana, supra n16 and Planned Parenthood Arizona, Inc. v. Betlach, 727 F.3d 960 (9th Cir. 2013), affirming injunctions against state exclusions of elective abortion providers from Medicaid eligibility on the ground that Medicaid confers on states authority only to set provider "qualifications" that are related to their ability to provide the requisite family planning services, not qualifications that further broader state policy objections

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authority to terminate provider agreements. And most courts that have considered the matter have held there is no federal constitutional impediment to doing so.[19]

State Funding Streams to Planned Parenthood

State legislatures and health agencies generally have plenary authority over the conditions they impose on state sources of health care funding, provided they do not single out particular providers for arbitrary treatment.

Benefits to Women's Health Care from Re-Directing Family Planning Funds

By redirecting public health care funding to public health agencies, non-public hospitals, and Federally-Qualified Health Centers and Rural Health Clinics, states can provide disadvantaged families with access, not only to family planning services, but also more vital preventive care including primary care services, prenatal and perinatal services, well-child services, immunizations, diagnostic labs and radiology, emergency services and pharmacies.[20] Federally Qualified Health Centers (FQHCs) provide primary care and facilitate access to comprehensive health, financial, and social services for culturally and linguistically diverse populations, as well as provide substance abuse and mental health services or referrals to such services. "All health centers are expected to assess the full health care needs of their target populations, form a comprehensive system of care incorporating appropriate health and social services, and manage the care of their patients throughout the system."[21] Unlike specialty clinics like Planned Parenthood, FQHCs must also provide for continuous after-hours care. Rural Health Clinics (RHCs) also offer preventive services and patient case management, but focus on medically underserved "shortage areas" for health care services.[22] Unlike many Planned Parenthood facilities, RHCs must be staffed by a doctor or other health care professional at all times.[23] RHCs offer primary medical care including "medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions," basic lab services and medical emergency procedures.[24]

For more information on the legal options discussed in this memorandum, please contact Alliance Defending Freedom at 480-444-0020 or visit www.ADFlegal.org.

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19 See cases cited at n10 above. Recent cases have also questioned whether providers or recipients have a right to sue in court to enforce Medicaid provisions. See, e.g., Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378 (2015) (holding no private right of action under the Supremacy Clause to enforce a provision of the Medicaid Act); but see Planned Parenthood of Indiana and Planned Parenthood v. Betlach, supra, n17 (holding implied right of action existed to enforce the "free choice of provider" provision).

20 It should be noted that only one in four women access contraception through a "reproductive services provider." Alan Guttmacher Institute, The role of family planning centers as gateways to health coverage, https://www.guttmacher.org/pubs/gpr/14/2/gpr140215.html. Also, Planned Parenthood does not provide many vital basic screening services like mammograms. Id.; Alliance Defending Freedom, "The Many Deceptions of Planned Parenthood," http://www.adflegal.org/detailspages/blog-details/allianceedge/2015/08/07/the-many-deceptions-of-planned-parenthood-(besides-selling-baby-parts).

21 42 U.S.C. § 1396d(1)(2)(B); "Health Center Program Expectations," PIN 98-23, dated August 17, 1998. http://www.fachc.org/pdf/cd_programexpectations.pdf; and 42 U.S.C. §§ 254b(b)(1)(A)(i)-(v); id. at 16.

22 42 U.S.C. § 1395x(aa)(2); Interpretive Guidelines - Rural Health Clinics: Conditions for Certification, Sec. II.A and B (citing 42 C.F.R. 491.5), available at http://narhc.org/resources/rhc-rules-and-guidelines/.

23 Id., Sec. V.B (citing 42 C.F.R. 491.8(a)).

24 Id., Sec. VI.A.2 (citing 42 C.F.R. 491.9).

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Governor Interns

From: Casey Mattox <cmattox@adflegal.org>
Sent: Tuesday, August 25, 2015 9:35 AM
To: drew.snyder@governor.ms.gov
Subject: Medicaid
Attachments: Mississippi.pdf

Please see attached. More info to follow later today.

Casey

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FOR FAITH FOR JUSTICE

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MISSISSIPPI MEDICAID AND MEDICARE PROVIDERS DISQUALIFIED FOR CAUSE

Basis for Exclusion (See Sheet 2 for description of code)	Medical Clinic	Last Name	First Name	Specialty	Address	City	State	Zip	Exclusion Date
1128a1	KEY MANAGEMENT, INC			CLINIC	2800 19TH AVE, #2	GULFPORT	MS	39501	19950103
1128b8	N T PLASTIC & ALLERGY CENTER			CLINIC	124 N 16TH AVENUE	LAUREL	MS	39440	19940817
1128a1		AZOMANI	HOSAN	GENERAL PRACTICE	169 CHANTILLY DRIVE	MADISON	MS	39110	20150420
1128b4		BATTLE	CLINTON	GENERAL PRACTICE/FP	BOX 423	PORT GIBSON	MS	39150	19881118
1128a1		BOYKINS	MICHAEL	PODIATRY	101 E LAKE DRIVE	BRANDON	MS	39042	19970108
1128b4		BURKE	JAMES	FAMILY PRACTICE	9 CAPERTON LANE	CLEVELAND	MS	38732	20030520
1128b4		BUSHART	JAMES	GENERAL PRACTICE/FP	110 PINE KNOLL DRIVE, #24	RIDGELAND	MS	39157	19960423
1128b4		CAMATSOS	GEORGE	GENERAL PRACTICE/FP	381 JOHN R JUNKIN, P O BO	NATCHEZ	MS	39120	19920330
1128a1		CARNEY	POMP	GENERAL PRACTICE/FP	520 VINE DRIVE	BRANDON	MS	39042	19970316
1128a1		CLEVELAND	ROBERT	FAMILY PRACTICE	74 BREAKERS LANE	RIDGELAND	MS	39157	20090818
1128a1		COUNCIL	BENJAMIN	GENERAL PRACTICE/FP	124 N 16TH AVE	LAUREL	MS	39440	19940817
1128b14		DAVID	LEOPOLDO	PODIATRY	C/O 2033 PURVIS BAXTERVIL	LUMBERTON	MS	39455	19990218
1128a3		DIEHL	HERMANN	CHIROPRACTIC	P O BOX 5000	YAZOO CITY	MS	39194	20150520
1128b4		DUDLEY	WILLIAM HINES	GENERAL PRACTICE/FP	5002 HIGHWAY 39 NORTH	MERIDIAN	MS	39303	19910906
1128b14		DURDIN	JAMES	CHIROPRACTIC	P O BOX 3742	TUPELO	MS	38803	19920402
1128b1		EVERMAN	KEITH	CHIROPRACTIC	642 APLEHMA PLACE	DIAMONDHEAD	MS	39525	20011018
1128b4		FINCH	CHARLES	GENERAL PRACTICE	400 CONCORD DR	CLINTON	MS	39056	20110818
1128b4		FOSTER	HARMON	GENERAL PRACTICE/FP	P O BOX 486	BEAUMONT	MS	39423	19910317
1128a1		FRANCIS	JO	INTERNAL MEDICINE	114 ROLLINGWOOD DR	NATCHEZ	MS	39120	20121018
1128b4		GARNER	MABLE	GENERAL PRACTICE/FP	P O BOX 423	INDIANOLA	MS	38751	19900613
1128a4		GRAHAM	PATRICK	GENERAL PRACTICE	P O BOX 1600, #97214-004	WASHINGTON	MS	39190	20130520
1128b14		GRATTA	JAMES	CHIROPRACTIC	BOX 245	LAUREL	MS	39440	19970218
1128b14		HARPER	TRACY	GENERAL PRACTICE/FP	124 MEADOWBROOK DR	VICKSBURG	MS	39180	19970427
1128b4		HICKS	HERBERT	GENERAL PRACTICE/FP	BLDG 104, 55 SGT PRENTISS	NATCHEZ	MS	39120	19980319
1128a1		IGNASIAK	ROBERT	FAMILY PRACTICE	P O BOX 5000	YAZOO CITY	MS	39194	20120119
1128b4		JAGNANDAN	NORRIS	GENERAL PRACTICE/FP	6300 OLD CANTON RD, #14-2	JACKSON	MS	39211	19990520
1128b4		JONES	FRANKLIN	GENERAL PRACTICE/FP	110 SOUTH 10TH STREET	HATTIESBURG	MS	39401	19920430
1128b4		MARDIS	JOSEPH	GENERAL PRACTICE	1205 MEADOWBROOK ROAD	JACKSON	MS	39206	20120220
1128b14		MCCUTCHEON	PHILIP	CHIROPRACTIC	3657 MARKET ST	PASCAGOULA	MS	39567	19970414
1128a2		MCDONALD	SHARON	GENERAL PRACTICE/FP	905 SASSE, APT #19	CLARKSDALE	MS	38614	19950222
1128b4		MCLAIN	PATRICK	INTERNAL MEDICINE	4923 POPLAR SPRINGS DR	MERIDIAN	MS	39305	20020919
1128b4		MEADOWS	ROGER	FAMILY PRACTICE	100 JOHN GRIFFITH ROAD	LAUREL	MS	39443	20120820
1128b4		NAJJAR	SAMIR	ENDOCRINOLOGY	2225 HALEY BARABOUR PKWY	YAZOO CITY	MS	39124	20020418
1128b4		NICHOLS	WILLIAM	INTERNAL MEDICINE	1694 HWY, 15 S	PHILADELPHIA	MS	39350	20010719
1128b4		PARKER	ELLIS	GENERAL PRACTICE/FP	SECOND AVE AND FOURTH ST	AMORY	MS	38821	19920910
1128b4		PATEL	MUKUND	GENERAL PRACTICE/FP	2500 5TH STREET N, STE 1	COLUMBUS	MS	39701	19980920
1128a1		RANKIN	EARNEST	FAMILY PRACTICE	331 LAKE OF PINES DR	JACKSON	MS	39201	20121220
1128a1		RUSSELL	KEITH	UROLOGY	P O BOX 1600, #81446-004	WASHINGTON	MS	39190	20111020
1128b4		SAMS	JOHN ELLIOT	OSTEOPATHY	105 5TH ST N, #305	COLUMBUS	MS	39703	20010719
1128b4		SMOOT	JOHN	GENERAL PRACTICE	P O BOX 233	BATESVILLE	MS	38606	20030120
1128b4		SPRAGINS	WILLIAM	GENERAL PRACTICE/FP	2596 HIGHWAY 12	HOLLANDALE	MS	38748	19981020
1128b4		STOKES	JOSEPH	OSTEOPATHY	R R 1, BOX 575	GREENWOOD	MS	38930	20030820
1128b4		TEMPLE	VAN	GENERAL PRACTICE	110 BELLE POINTE DRIVE	MADISON	MS	39110	20101020
1128a1		THOMAS	CASSANDRA	GENERAL PRACTICE	107 LITTLE CREEK RD	RIDGELAND	MS	39157	20130120
1128b4		VAUGHAN	THOMAS	ANESTHESIOLOGY	1320 JOHN A QUITMAN	NATCHEZ	MS	39120	20040420
1128b4		WALKER	GREGORY	GENERAL PRACTICE/FP	403 GETWELL DR, STE B	SENATOBIA	MS	38668	19981220

1128b4	WALTZ	FRANK	GENERAL PRACTICE/FP	POST OFFICE BOX 309	LEAKESVILLE	MS	39451	19881104
1128b4	WONG	SIDNEY	GENERAL PRACTICE/FP	18048 DEDEAUX CLAN RD	GULFPORT	MS	39503	19981020
1128b14	YURICK	RICHARD	CHIROPRACTIC	1385 BLUE MEADOW RD, APT 2	BAY SAINT LOUIS	MS	39520	20130919

Information from http://oig.hhs.gov/exclusions/exclusions_list.asp Last accessed 08/19/2015

Exclusion Authorities

Footnotes relate to effective dates.

Scope

Social Security Act	42 USC §	Amendment
1128*	1320a-7	Scope of exclusions imposed by the OIG expanded from Medicare and State health care programs to all Federal health care programs, as defined in section 1128B(f)(1).

Mandatory Exclusions

Social Security Act	42 USC §	Amendment
1128(a)(1)	1320a-7(a)(1)	Conviction of program-related crimes. Minimum Period: 5 years
1128(a)(2)	1320a-7(a)(2)	Conviction relating to patient abuse or neglect. Minimum Period: 5 years
1128(a)(3)†	1320a-7(a)(3)	Felony conviction relating to health care fraud. Minimum Period: 5 years
1128(a)(4)†	1320a-7(a)(4)	Felony conviction relating to controlled substance. Minimum Period: 5 years
1128(c)(3)‡(G)(i)*	1320a-7(c)(3)(G)(i)	Conviction of two mandatory exclusion offenses. Minimum Period: 10 years
1128(c)(3)‡(G)(ii)*	1320a-7(c)(3)(G)(ii)	Conviction on 3 or more occasions of mandatory exclusion offenses. Permanent Exclusion

Permissive Exclusions

Social Security Act	42 USC §	Amendment
1128(b)(1)(A)*	1320a-7(b)(1)(A)	Misdemeanor conviction relating to health care fraud. Minimum Period: 3 years
1128(b)(1)(B)†	1320a-7(b)(1)(B)	Conviction relating to fraud in non- health care programs. Minimum Period: 3
1128(b)(2)	1320a-7(b)(2)	Conviction relating to obstruction of an investigation. Minimum Period: 3 years
1128(b)(3)†	1320a-7(b)(3)	Misdemeanor conviction relating to controlled substance. Minimum Period: 3 years
1128(b)(4)	1320a-7(b)(4)	License revocation or suspension. Minimum Period: No less than the period imposed by the state licensing authority.
1128(b)(5)	1320a-7(b)(5)	Exclusion or suspension under federal or state health care program. Minimum Period: No less than the period imposed by federal or state health care program.
1128(b)(6)	1320a-7(b)(6)	Claims for. excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care, or failure of an HMO to furnish medically necessary services. Minimum Period: 1 year
1128(b)(7)	1320a-7(b)(7)	Fraud, kickbacks, and other prohibited activities. Minimum Period: None
1128(b)(8)	1320a-7(b)(8)	Entities controlled by a sanctioned individual. Minimum Period: Same as length of individual's exclusion.
1128(b)(8)(A)#	1320a-7(b)(8)(A)	Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/ control. Minimum Period: Same as length of individual's exclusion.
1128(b)(9), (10), and (11)	1320a-7(b)(9), (10), and (11)	Failure to disclose required information, supply requested information on subcontractors and suppliers; or supply payment information. Minimum Period: None
1128(b)(12)	1320a-7(b)(12)	Failure to grant immediate access. Minimum Period: None
1128(b)(13)	1320a-7(b)(13)	Failure to take corrective action. Minimum Period: None
1128(b)(14)	1320a-7(b)(14)	Default on health education loan or scholarship obligations. Minimum Period: Until default has been cured or obligations have been resolved to Public Health Service's (PHS) satisfaction.
1128(b)(15)‡	1320a-7(b)(15)	Individuals controlling a sanctioned entity. Minimum Period: Same period as entity.
1128(b)(16)£	1320a-7(b)(16)	Making false statement or misrepresentations of material fact. Minimum period: None
1156‡	1320c-5	Failure to meet statutory obligations of practitioners and providers to provide' medically necessary services meeting professionally recognized standards of health care (Peer Review Organization (PRO) findings). Minimum Period: 1 year

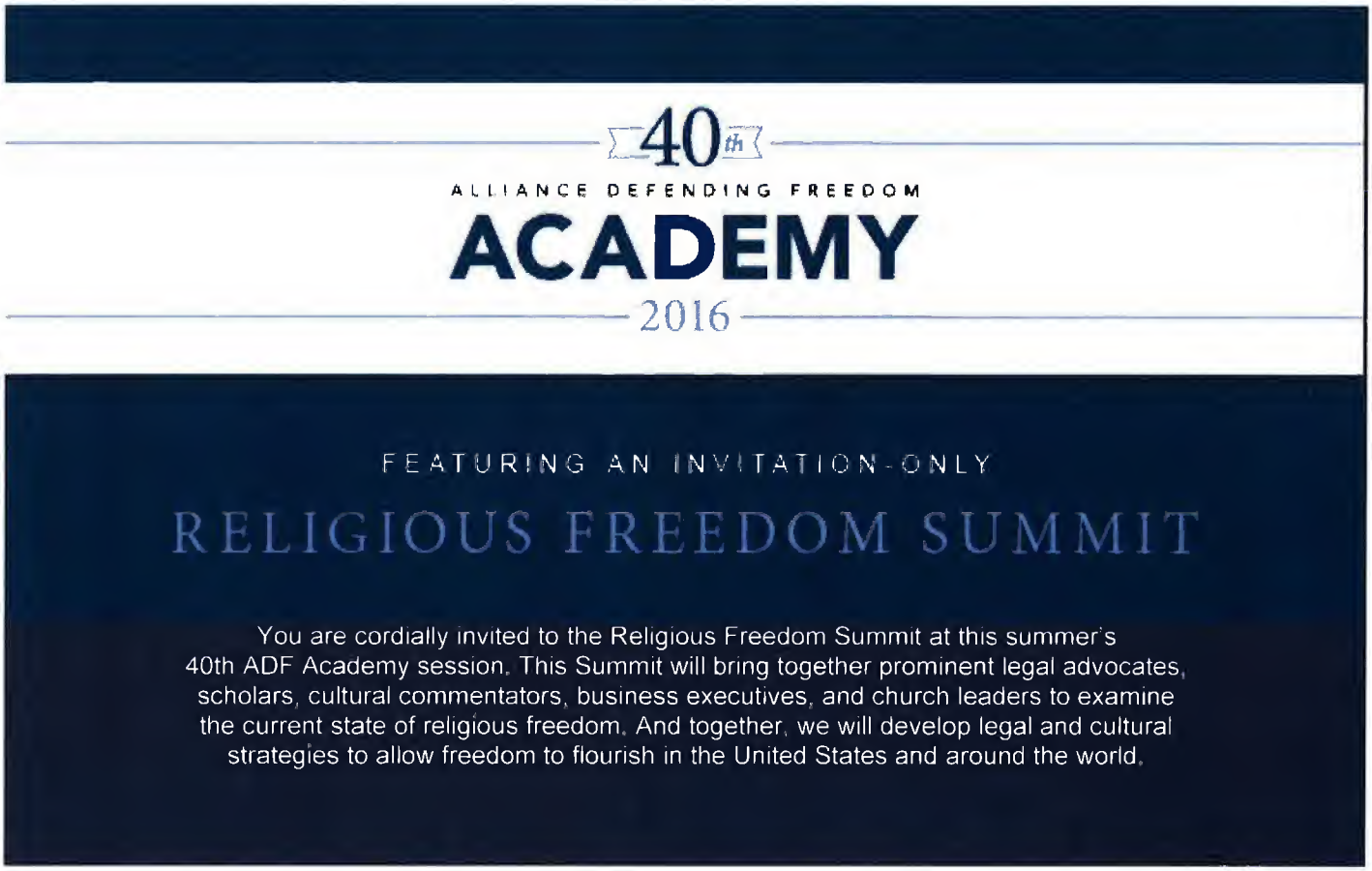
Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Monday, March 28, 2016 9:43 AM
To: Drew Snyder
Subject: invitation

Hi Drew,

Hope you're doing well! We wanted to extend this invitation to you to attend a special gathering of thought leaders on religious freedom this summer. Happy to chat more by phone if that would be helpful. Would love for you to be able to attend.

Best,
Kellie



MAUI, HAWAII | JUNE 20–24, 2016

We hope you will join us.
ADF will cover the cost of each attendee's registration, lodging, and scheduled meals.

To confirm your attendance or for additional information, please contact Johanna Seiter at ***JSeiter@ADFlegal.org.***

ALLIANCE DEFENDING
FREEDOM
FOR FAITH FOR JUSTICE

15100 N 90th Street, Scottsdale, Arizona 85260

ALLIANCE DEFENDING FREEDOM
FOR FAITH FOR JUSTICE

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Governor Interns

From: Braden Campbell <braden.campbell@law360.com>
Sent: Monday, January 8, 2018 12:09 PM
To: drew.snyder@governor.ms.gov; jfmitche@stanford.edu; ktheriot@adflegal.org
Subject: HB 1523 cert denial / Law360

Hi,

I'm writing a story for Law360 on the Supreme Court denying cert today in the HB 1523 appeals and I wanted to see if you had a comment. Thanks.

--
Braden Campbell
Senior Reporter, Employment
LAW360
A LexisNexis® Company
Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
646-350-1394

Governor Interns

From: Whitney Lipscomb <Whitney.Lipscomb@governor.ms.gov>
Sent: Thursday, March 31, 2016 7:08 PM
To: kfiedorick@adflegal.org
Subject: Governor Bryant Signing Statement for HB 152
Attachments: HB 1523 Signing Statement.docx; Senate 2687 Bill Signing Statement.pdf

Kellie,

Thank you for taking the time to speak with me and agreeing to help provide some language for Governor Bryant's Signing Statement. Attached is the beginning of the Signing Statement for HB 1523 along with a Signing Statement he has done in the past. Also you will find information related to HB 1523 here. Thanks again for your help.

Best,
Whitney

Whitney H. Lipscomb
Counsel
Office of Governor Phil Bryant
P.O. Box 139
Jackson, MS 39205
(601) 576-2026
whitney.lipscomb@governor.ms.gov

April 1, 2015

TO THE MEMBERS OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES AND THE MISSISSIPPI STATE SENATE:

GOVERNOR'S SIGNING STATEMENT FOR HOUSE BILL1523

I am signing House Bill 1523, "AN ACT TO CREATE THE "PROTECTING FREEDOM OF CONSCIENCE FROM GOVERNMENT DISCRIMINATION ACT"; TO PROVIDE CERTAIN PROTECTIONS REGARDING A SINCERELY HELD RELIGIOUS BELIEF OR MORAL CONVICTION FOR PERSONS, RELIGIOUS ORGANIZATIONS AND PRIVATE ASSOCIATIONS; TO DEFINE A DISCRIMINATORY ACTION FOR PURPOSES OF THIS ACT; TO PROVIDE THAT A PERSON MAY ASSERT A VIOLATION OF THIS ACT AS A CLAIM AGAINST THE GOVERNMENT; TO PROVIDE CERTAIN REMEDIES; TO REQUIRE A PERSON BRINGING A CLAIM UNDER THIS ACT TO DO SO NOT LATER THAN TWO YEARS AFTER THE DISCRIMINATORY ACTION WAS TAKEN; TO PROVIDE CERTAIN DEFINITIONS; AND FOR RELATED PURPOSES."

STATE OF MISSISSIPPI

Office of the Governor

March 18, 2013

TO THE MEMBERS OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES AND THE MISSISSIPPI STATE SENATE:

GOVERNOR'S SIGNING STATEMENT FOR SENATE BILL 2687

I am signing Senate Bill 2687, "AN ACT TO RESERVE TO THE LEGISLATURE ANY REGULATION OF CONSUMER INCENTIVE ITEMS AND NUTRITION LABELING FOR FOOD THAT IS A MENU ITEM IN RESTAURANTS, FOOD ESTABLISHMENTS AND VENDING MACHINES; TO SPECIFY THAT THE ACT WOULD NOT AFFECT THE FEDERAL REGULATION OF NUTRITION LABELING UNDER EXISTING FEDERAL LAW; AND FOR RELATED PURPOSES."

This bill reserves to the Legislature the authority to regulate the sale and marketing of food on a statewide basis. It protects consumers' freedom of choice and avoids a patchwork of inconsistent regulations on retailers that operate across jurisdictional lines. Further, this bill will not affect laudable efforts by local schools to ensure that food offered in schools is healthy and nutritious. Recent studies show that obesity among our Mississippi elementary students has fallen 13.3% between 2005 and 2011. Efforts like these are essential to the continued improvement of the health of Mississippi's schoolchildren.

It simply is not the role of the government to micro-regulate citizens' dietary decisions. The responsibility for one's personal health depends on individual choices about a proper diet and appropriate exercise. Leading a healthy lifestyle is important to me, and it is a personal priority of mine to educate Mississippians on the importance of making good health decisions.

Respectfully submitted,

Phil Bryant
Governor

Governor Interns

From: Casey Mattox <cmattox@adflegal.org>
Sent: Friday, April 15, 2016 12:56 PM
To: Drew Snyder
Subject: FW: Memo on SB 2238
Attachments: 2016-04-06 ADF to MS Legislature re Amendment 1.docx

Drew,

Good to reconnect. I am more than happy to discuss if you have any questions I might answer. Please let me know. My cell is 703-969-6801.

Casey

ALLIANCE DEFENDING FREEDOM
FOR FAITH FOR JUSTICE

Casey Mattox
Senior Counsel
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202-888-7625 (Direct Dial)
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cmattox@ADFlegal.org
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Not Licensed in DC
Practice Limited to Federal Court

From: Jameson Taylor [mailto:taylor@mspolicy.org]
Sent: Thursday, April 7, 2016 3:17 PM
To: Drew Snyder
Cc: Casey Mattox; Steven H. Aden
Subject: Memo on SB 2238

Drew:

We asked ADF to prepare a memo on SB 2238, as we were concerned the initial language would trigger a successful lawsuit from Planned Parenthood. The House amended the bill to make it more generic and use language that has already passed muster in the 5th circuit. As the attached memo explains, the strike all amendment from the House is "lawful and constitutional and will likely pass judicial muster." We have two Supreme Court cases on our side.

Steve, below, wrote it and can answer any specific questions. He is cc-ed here, along with his colleague Casey Mattox.

Do you think the governor would nudge the Senate to pass the bill?

All the best, Jameson

ALLIANCE DEFENDING FREEDOM
FOR FAITH FOR JUSTICE

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ADFlegal.org

ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2016

Members of the Senate and House
State of Mississippi
400 High St
Jackson, MS 39201

Dear Members of the Conference Committee:

Alliance Defending Freedom has been asked to offer its opinion on the federal legal and constitutional status of Amendment No. 1 to Senate Bill No. 2238, offered by Representative Hood and adopted by voice vote and sent back to the Senate for conference. This "strike all" amendment replaces the original language with the following:

> SECTION 1. Notwithstanding any other provision of Section 43-13-117, the division shall not authorize payment of part or all of the costs of care and services rendered by any entity that performs nontherapeutic abortions, maintains or operates a facility where nontherapeutic abortions are performed, or is affiliated with such an entity. For purposes of this provision, "nontherapeutic abortions" means abortions that are not qualified for federal matching funds under the Medicaid program, 42 USC Section 1396 et seq., and as amended hereafter, and "affiliated with" means having a legal relationship with another entity created or governed by one or more written instruments that demonstrates common control, ownership, franchisee status or management, or that grants a license or other authority to utilize the other entity's brand name, trademark, service mark or other registered identification mark.

In our view, for the following reasons, Amendment 1 is lawful and constitutional, and likely to pass judicial muster.

Although the Act applies to funding from multiple federal sources, insofar as its provisions govern the State's administration of family planning funds, it will primarily impact Title X of the Public Health Services Act (the federal family planning program), Title IV (the Temporary Assistance to Needy Families Program), Title V (the Maternal and Child Health Services Block Grant Program), and Title XX (the Social Services Block Grant Program).

Title X of the Public Health Services Act (Federal Family Planning Program).

There is no conflict between the Act's provisions and Title X law and regulations, and the Act therefore raises no federal preemption issues. Implied preemption due to a conflict with federal law has been held to arise in only two circumstances: when state law stands as an obstacle to the execution of Congressional objectives,[1] and when it is physically impossible to comply with both state and federal requirements.[2] The Act's provisions present neither circumstance.

The Secretary of the Department of Health and Human Services ("HHS") administers Title X. Under Title X, the Secretary "make[s] grants to and enter[s] into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services."[3] "Any public or nonprofit private entity may apply for a grant" to provide family planning services."[4] In making such grants and contracts under this section, the Secretary is to take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance.[5]

HHS guidance states that a Title X program grantee has the discretion to either discharge the duties itself or to select delegate agencies to perform the Title X services.[6] Where a grantee, such as a state health department or regional cooperative agency, decides to utilize delegate agencies, HHS mandates that the grantee remains solely responsible for the legal and financial aspects of the delegate agencies' progress towards the project's goals.[7] *Planned Parenthood Association of Utah, et al. v. Schweiker*[8] affirmed the State of Utah's authority to act as sole grantee for the Title X program within the state (pursuant to a state statute) through a consolidated grant award from HHS Region VIII. The federal agency's actions were pursuant to a policy of consolidating grants in the interests of efficiency and in view of limited funds

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1 *See, e.g., International Paper v. Ouellette*, 479 U.S. 481, 491-92 (1987).

2 *See, e.g., PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2577 (2011).

3 42 U.S.C. § 300(a).

4 42 C.F.R. § 59.3, ref. 42 U.S.C. § 300(b).

5 42 U.S.C. § 300(b).

6 U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Population Affairs, Office of Family Planning, *Program Guidelines for Project Grants for Family Planning Services,* ¶ 6.1 (January 2001), available at http://www.hhs.gov/opa/familyplanning/toolsdocs/2001_ofp_guidelines_complete.pdf ("Family planning services under Title X grant authority may be offered by grantees directly and/or by delegate/contract agencies operating under the umbrella of the grantee.").

7 *See id.*

8 700 F.2d 710, 723-24 (D.C. Cir. 1983).

availability.[9] The Title X regional administrator awarded the state health department the grant based on the department's assurances that it could and would provide family planning services to all eligible women that had previously been served by the State and two other providers.[10] Planned Parenthood and the other non-state provider sued, contending that HHS' actions violated their right to apply directly for grants and that its policy of favoring consolidated grants was unlawful.[11] The district court dismissed the lawsuit, holding that "not only did Congress not enact legislation prohibiting consolidated grants, but the pertinent legislative history evidences Congress' approval of consolidated grants where appropriate."[12] The award decision, said the court, was not "arbitrary, capricious, an abuse or discretion, or otherwise not in accordance with law,"[13] and was consistent with 'HHS' valid policy of grant consolidation" to "lower administrative costs and assure better delivery of services."[14] The court of appeals affirmed, concluding that Title X protected only the right to apply for a grant, not to receive one,[15] and that the consolidation process was consistent with congressional directions to encourage "better coordination of existing services"[16] and to "determine the degree of duplication and philosophical consistency existing in current Federal programs including family planning."[17] In fact, the court noted, federal law required HHS to favor consolidated grant applications where appropriate.[18] HHS remains under that mandate today.

The Act's provisions implement the letter and intent of federal law prohibiting subsidization of abortion through the Title X program.[19] *Rust v. Sullivan*[20] upheld the constitutionality of HHS regulations prohibiting Title X family planning recipients from including abortion services, referrals or counseling in program activities. "[T]he Government is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purposes for which they were authorized," the Supreme Court held.[21] The government "can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way."[22] Delegates that still intend to engage in

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9 In 1982, the court noted, consolidated grants had been awarded in 28 states, with 23 consolidated in state agencies and 5 in non-state agencies. 700 F.2d at 714.

10 *Id.* at 715.

11 *Id.* at 717.

12 *Id.* at 718.

13 *Id.*, quoting 5 U.S.C. § 706(2)(A).

14 *Id.*

15 *Id.* at 723.

16 *Id.* at 724, quoting 42 U.S.C. § 300z(a)(10)(B).

17 *Id.*, quoting S.Rep. No. 161, 97th Cong., 1st Sess. 16 (1981).

18 *Id.* at 726, citing 42 U.S.C § 300z-6(a)(4).

19 *See* 42 U.S.C. § 300a-6.

20 500 U.S. 173, 196-99 (1991).

21 *Id.* at 196.

22 *Rust*, 500 U.S. at 193.

abortion-related services must "conduct those activities through programs that are separate and independent" from Medicaid-funded facilities, a rule the Court in *Rust* found constitutionally permissible for Title X grantees.[23]

Title IV, Title V and Title XX.

State agencies engaged in federal partnerships such as the Temporary Assistance to Needy Families Block Grant Program (Title IV), the Maternal and Child Health Services Block Grant Program (Title V), and the Social Services Block Grant Program (Title XX) have authority to administer such grants in a manner that reflects state policy, provided the implementation is congruent with federal mandates. Nothing in the statutes and implementing regulations for these programs prohibits State partners from directing grants to particular types of providers to maximize the effective delivery of preventive healthcare services.[24]

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[23] *Id.* A recent federal trial court injunction against Kansas' exclusion of Planned Parenthood from its Title X program, *Planned Parenthood v. Brownback*, 799 F. Supp. 2d 1218 (D. Kan. 2011), *denying clarification*, 799 F.3d 1218, *rev'd sub nom. Planned Parenthood v. Moser*, 747 F.3d 814 (10th Cir. 2014), turned principally on two factors: 1) the absence of any opportunity for Planned Parenthood to apply to qualify as a Title X recipient (*id.* at 1229); and 2) statements by legislative sponsors and supporters of the bill that demonstrated an unconstitutional legislative purpose to single out Planned Parenthood as the target for de-funding because of its participation in legal elective abortion procedures (*id.* at 1230). (A North Carolina federal court decision involving that state's decision to specifically strip Planned Parenthood of funding, *Planned Parenthood of Cent. N.C. v. Cansler*, 877 F. Supp. 2d 310 (M.D.N.C. 2012), is to the same effect.) The Tenth Circuit reversed the Kansas decision, holding that Planned Parenthood had no right to sue to enforce the provisions of Title X, and that there was no unconstitutional legislative purpose in the bill. 747 F.3d at 817; *see also Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015) (holding no private right of action under the Supremacy Clause to enforce a provision of the Medicaid Act). Adoption of the proposed bill's provisions in Section 4(a) allowing all providers to apply for family planning funding while prioritizing funding to providers that offer comprehensive and preventive care should address concerns about eligibility, while the detailed "Findings" section, which makes it clear that the purpose of the bill is to advance women's health and steward limited public health resources, should obviate any claim of an improper purpose for the bill.

[24] *See generally* 42 U.S.C. §§ 401, 403, 404 (purposes of and limitations on TANF grants); 42 U.S.C. § 704 (purposes of and limitations on Maternal and Child Health Services grants); and 42 U.S.C. §§ 1397, 1397d (purposes of and limitations on Social Services grants). It should be noted that Federal courts have held that a State Medicaid program may not disqualify providers based on their participation in abortion *See Planned Parenthood of Indiana, Inc. v. Comm'r, Indiana State Dept. of Health*, 699 F.3d 962 (7th Cir. 2012) and *Planned Parenthood Arizona, Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013) (same). This issue is currently under consideration by the Fifth Circuit Court of Appeals (whose jurisdiction includes Mississippi) in a case arising out of Louisiana and the Eighth Circuit in a case involving Arkansas. For this reason, there is a risk a court would rule that Amendment 1's application to Medicaid is unconstitutional; however, the bill's application to other funding streams would be unaffected.

Constitutionality.

The Supreme Court has observed that state governments have "a legitimate and substantial interest in preserving and promoting fetal life."[25] To further that end, States have authority to enact laws and policies that encourage childbirth over abortion,[26] including withholding taxpayer subsidies for abortion. As the Court has stated numerous times, "[T]he State need not commit *any* resources to facilitating abortions....",[27] and "[A] woman's freedom of choice [does not] carr[y] with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices."[28] Federal law reflects this policy choice through the Hyde Amendment, which prohibits funding for abortion except under certain extreme circumstances.[29] Funding for these circumstances is retained through this bill via the exception for "federally qualified abortions" set out in Sec. 4(b).[30] Like the Hyde Amendment upheld by the Supreme Court, this bill "places no obstacles absolute or otherwise in the pregnant woman's

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25 *Gonzales v. Carhart*, 550 U.S. 124, 145 (2007).

26 *Id.* at 146.

27 *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 511 (1989) (emphasis supplied), citing *Harris v. McRae*, 448 U.S. 297 (1980); *Poelker v. Doe*, 432 U.S. 519, 521 (1977), and *Maher v. Roe*, 432 U.S. 464 (1977).

28 *Harris v. McRae*, 448 U.S. at 316.

29 *See* Omnibus Appropriations Act of 2009, Pub. L. No. 118, §§ 507-08, 123 Stat. 524, 802-03 (2009) (enacting H.R. 1105).

30 It is the uniform view in the federal courts that State participation in the Medicaid program obligates State officials to implement public funding of Hyde-qualified abortions. In *Edwards v. Hope Medical Group for Women*, 512 U.S. 1301 (1994), the Supreme Court denied a request for emergency relief from an injunction restraining the State from funding Hyde-qualified abortions, with Justice Antonin Scalia, sitting as Circuit Justice, writing:

> The only issue potentially worthy of certiorari is the premise underlying the District Court's decision: that Title XIX requires States participating in the Medicaid program to fund abortions (at least "medically necessary" ones) unless federal funding for those procedures is proscribed by the Hyde Amendment. *The Courts of Appeals to address this question have uniformly supported that premise*. We have already denied certiorari in two of those cases, and it is in my view a certainty that four Justices will not be found to vote for certiorari on the Title XIX question unless and until a conflict in the Circuits appears.

512 U.S. at 1312-13 (citations omitted; emphasis supplied). No such conflict has appeared in the ensuing years since *Hope Clinic*; in fact, the Circuits have remained unanimous on this point. *See, e.g., Planned Parenthood Affiliates of Michigan v. Engler*, 73 F.3d 634 (6th Cir. 1996); *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995), *cert. den.*, 516 U.S. 1011 (1995); *Elizabeth Blackwell Health Ctr. for Women v. Knoll*, 61 F.3d 170 (3rd Cir. 1995), *reh. en banc den., cert. den.*, 516 U.S. 1093 (1995). Thus, Amendment 1 includes a provision excluding providers of such non-elective abortions.

path to an abortion" because she "continues as before to be dependent on private sources for the service she desires."[31] Nor does the Act prevent women from procuring abortions from other privately funded facilities, as with the regulation against using public hospitals for abortions upheld in *Webster v. Reproductive Health Services.*[32] In *Webster*, the Court reasoned that Missouri's law prohibiting use of public facilities for abortions "leaves a pregnant woman with the same choices as if the State had chosen not to operate any public hospitals at all."[33] Here, likewise, the Act leaves pregnant women seeking abortions with the same choices as if the State had chosen not to participate in Medicaid at all.

Nor does the Act impermissibly condition government benefits on the forfeiture of constitutional rights.[34] The Supreme Court has never held that providers or physicians have a constitutional right to perform abortions—or any medical procedure for that matter—independent from the rights of the patient.[35] In fact, the Court has even declined to determine whether a physician has a "constitutional right[] to practice medicine."[36] To the contrary, it is clear that the State may regulate the ability of physicians to practice medicine, including performing abortions.[37] Moreover, the Fifth Circuit Court of Appeals ruled in *Planned Parenthood v. Suehs*, 692 F.3d 343 (5th Cir. 2012), that Texas' prohibition on providers of elective abortion and entities associated with abortion providers receiving public funds under the state Medicaid waiver program did not violate their First Amendment right of association or right to equal protection.[38] The Seventh Circuit Court of Appeals reached a similar conclusion in assessing Indiana's provision, similar to Section 4(b) of the proposed Act, reasoning that Indiana's differential treatment of providers of elective abortion was a permissible governmental preference. *Planned Parenthood of Indiana, Inc. v. Comm'r, Indiana State Dept. of Health*, 699 F.3d 962 (7th Cir. 2012).

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31 *Maher v. Roe*, 432 U.S. 464, 474 (1977) (upholding prohibitions on the use of Medicaid to pay for non-therapeutic abortions).

32 492 U.S. 490, 509, 522 (1989).

33 *Id.* at 509.

34 *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

35 Notably, state Medicaid agreements are generally considered terminable at will under state law (although the law of the subject jurisdiction where the bill is under consideration should be consulted on this point).

36 *Singleton v. Wulff*, 428 U.S. 106, 113 (1976) (plurality opinion) (citation and internal quotations omitted).

37 *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1992) (plurality opinion); *see also Lambert v. Yellowley*, 272 U.S. 581, 596 (1926) ("[T]here is no right to practice medicine which is not subordinate to the police power of the states[.]"); *A Woman's Choice-East Side Women's Clinic v. Newman*, 305 F.3d 684, 685-86, 693 (7th Cir. 2002).

38 A Texas State judge followed suit January 2013, ruling that Planned Parenthood had not established a right to a preliminary injunction against the de-funding under state law. *See* "Texas Judge Rules State Can Keep Planned Parenthood De-Funded," http://www.lifenews.com/2013/01/11/texas-judge-rules-state-can-keep-planned-parenthood-de-funded/ (Jan. 11, 2013).

Moreover, the Act does not by its terms render any particular abortion provider ineligible for Medicaid family planning reimbursements. If a provider desires to continue receiving Medicaid funds after passage of this bill, it can maintain affiliation with abortion clinics and continue eligibility, provided there is no cross-subsidy. In *Planned Parenthood of Mid-Missouri and Eastern Kansas v. Dempsey*,[39] the Eighth Circuit held that a Missouri law employing similar provisions did not impose an unconstitutional condition on abortion providers' receipt of Title X family-planning funds because recipients could continue "to exercise their constitutionally protected rights through independent affiliates."[40] "[N]othing [in the law] expressly prohibits grantees from maintaining an affiliation with an abortion service provider, so long as the affiliated abortion service provider does not directly or indirectly receive State family-planning funds."[41] Rejecting the assertion that the burden on abortion providers to bifurcate their abortion services from their family planning services rendered the law unconstitutional, the court stated, "The Constitution does not guarantee that recipients of State funds will not be required to 'expend effort' to comply with funding restrictions."[42]

The Fifth Circuit Court of Appeals held likewise in reviewing an abortion exclusion provision similar to the one set out in the Act.[43] Texas' amendment, "Rider 8," passed in 2003, restricted distribution of federal family planning funds, including Title X and Title XIX funds, to individuals or entities that did not perform elective abortion procedures and did not contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Planned Parenthood filed suit, claiming among other grounds that Rider 8 violated the Supremacy Clause by imposing additional eligibility requirements on its receipt of federal funds that were inconsistent with federal funding law.[44] The Fifth Circuit Court of Appeals rejected this argument, holding that Rider 8 did not impose conflicting requirements on providers.[45] Because Rider 8's language could be read to permit family planning agencies to continue to receive funds by creating separate affiliates, in the court's words by "dividing into 'Family Planning' entities and 'Abortion Services' entities," it did not run afoul of federal law. [46] It is

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39 167 F.3d 458, 463 (8th Cir. 1999).

40 *Id.* at 463.

41 *Id.*

42 *Id.* at 464.

43 *Planned Parenthood of Houston & SE Texas v. Sanchez,* 403 F.3d 324 (5th Cir. 2005).

44 *Id.*, at 328.

45 *Id.*, at 337-338.

46 The Texas lawsuit was subsequently dismissed after Planned Parenthood unilaterally complied with the requirements of Rider 8 by incorporating six separate, independent affiliates for the provision of abortion services, transferring the abortion licenses to those facilities and agreeing to maintain accounting, timekeeping and boards of directors separate from the family planning services providers. See *Planned Parenthood of Houston and Southeast Texas v. Sanchez,* 480 F.3d 734, 737 (5th Cir. 2007) ("Plaintiffs took the necessary steps to establish legally separate affiliates to provide abortion services. Plaintiffs thereby maintained their eligibility for receiving TDH family planning funds.").

well established that "The mere fact that a state program imposes an additional 'modest impediment' to eligibility for federal funds does not provide a sufficient basis for preemption," the court concluded.[47]

CONCLUSION

Amendment 1 offends neither federal constitutional law nor federal statutes governing Title X and similar federal programs. Alliance Defending Freedom would be privileged to assist in the defense of the bill if enacted by the Mississippi legislature.

Respectfully submitted,

/s/ Steven H. Aden
Senior Counsel

[47] *Planned Parenthood v. Sanchez*, 403 F.3d at 337, citing *PhARMA v. Walsh*, 538 U.S. at 661-62 (rejecting Medicaid Act preemption challenge to state statute imposing prior authorization requirement on access to prescription drugs financed by federal funds); *Vega-Ramos*, 479 F.3d 46, at 52 (2007) (territory's modifications to Medicare Advantage plan held not a prohibited "standard" for operation under Medicare Part C, but rather a permissible eligibility requirement for an entity wishing to participate in a Puerto Rico Medicaid program).

Governor Interns

From: Casey Mattox <cmattox@adflegal.org>
Sent: Friday, September 18, 2015 5:16 PM
To: Casey Mattox; drew.snyder@governor.ms.gov
Subject: 2 new pieces.
Attachments: LouisianaLetter.pdf; 2015 09 15 Casey Mattox Congressional Testimony.pdf

Would love to talk when you're able.

ALLIANCE DEFENDING FREEDOM
FOR FAITH FOR JUSTICE

Casey Mattox
Senior Counsel
202-393-8690 (Office)
202-888-7625 (Direct Dial)
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cmattox@ADFlegal.org
ADFlegal.org
Not Licensed in DC
Practice Limited to Federal Court

From: Casey Mattox
Sent: Wednesday, September 9, 2015 10:34 PM
To: 'drew.snyder@governor.ms.gov'
Subject: White Paper

Drew,

Please see attached white paper.

703-969-6801

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

September 15, 2015

Planned Parenthood
ATTN:Melaney Linton
4018 Magazine Street
New Orleans, LA 70115

Certified Mail, Return Receipt Requested (7012 2210 0001 6260 0080)

Re: Termination / Revocation of Louisiana Medicaid Provider Agreement
Provider Number 91338

Dear Mrs. Linton:

Based on the initial findings of Louisiana's investigation into Planned Parenthood Gulf Coast (PPGC), you are hereby notified that the Department of Health and Hospitals (DHH) is hereby terminating / revoking the PPGC provider agreement referenced above. This action is being taken pursuant to La. R.S. 46:437.11 and 46:437.14. This action will take effect following final determination, judgment, completion, withdrawal from, or termination of all administrative and/or legal proceedings in this matter. Such proceedings include, but are not limited to, informal hearings, administrative appeals, appeals for judicial review, appellate judgments, and/or denials of writ applications.

Specifically, it is clear that PPGC entered into a Federal False Claims Act settlement signed on July 25, 2013, by Melaney A. Linton, President and CEO of PPGC agreeing to pay $4,300,000 to the United States who "contend[ed] that PPGC submitted false claims." Settlement Agreement, *Reynolds v. Planned Parenthood Gulf Coast*, No. 9:09-cv-124 (E.D. TX, Lufkin Div.)(July 25, 2013). In accordance with the Louisiana Administrative Code, Title 50, this is a violation. Further, under that same administrative code, PPGC had an affirmative duty to inform BHSF in writing of this violation. Since DHH, through BHSF, was not informed within ten (10) working days of when the provider knew or should have known of the violation, this constitutes a separate violation. Also under consideration in our departmental proceedings are provider audits and federal false claims cases against Planned Parenthood of America (PPFA) affiliates. Included among these are pending federal false claims cases against PPGC, one in which the presiding judge found that the information already provided "allows the court to draw the reasonable inference that Planned Parenthood knowingly filed false claims." Memorandum Opinion and Order at 17, *Carroll v. Planned Parenthood Gulf Coast*, 4:12-cv-03505 (S.D. TX, Houston Div.) (May 14, 2014). Providers and providers-in-fact are required to ensure that all their agents and affiliates are in compliance with all federal and state laws as well as rules, policies and procedures of the Medicaid program. PPGC and its parent organization PPFA has failed to do so and has failed to notify DHH of violations and misconduct by affiliates and providers-in-fact. These are also violations of La. Admin. Code, Title 50.

Further, in regard to the Center for Medical Progress (CMP) videos, DHH reviewed responses received from PPGC via letters dated July 24, 2015, and August 14, 2015, from Melaney Linton in response to DHH letters dated July 15, 2015, and August 4, 2015. After said review, DHH believes that PPGC misrepresented its actions therein and had contradictions within the body of the letter and with the statements and admissions made in the CMP videos, including but not limited to the video released on August 4, 2015 and taped in April of this year, containing conversations with PPGC senior management, including the PPGC director of research and PPCFC facility director.

According to La. R.S. 46:437.11(D)(2), the Secretary may terminate a provider agreement immediately and without written notice if a health care provider is the subject of a sanction or of a criminal, civil, or departmental proceeding. The Department determines that PPGC currently fits within this statute due to the investigations of PPGC by both DHH and the Louisiana Office of Inspector General. DHH expressly reserves the right to amend this notice and to terminate your provider agreement immediately and without written notice based on the further findings of the pending investigations by any department of Louisiana, any other State or state agency, or the pending investigations in the congressional committees. DHH has elected to provide PPGC with full due process rights as mentioned above and will not pursue immediate termination pursuant to this notice.

According to 46:437.14(A)(1), DHH may deny or revoke enrollment in the Medicaid program in cases of misrepresentation. As alleged above, DHH believes PPGC's responses to inquiries, when compared to clear representations in various videos, rises to the level of misrepresentation. Further, according to La. R.S. 46:437.14(A)(10) and (12), DHH may move to revoke enrollment if a provider is found in violation of licensing or certification conditions or professional standards relating to the licensure or certification of health care providers or the required quality of goods, services, or supplies provided. Also, a provider agreement can be revoked for failure to meet any condition of enrollment. As a Medicaid provider, PPGC is charged with maintaining compliance with all state statutes, rules and regulations, including the Louisiana Administrative Code mentioned above. PPGC's actions mentioned above are clear violations of applicable administrative code provisions and are clear violations of the statutes mentioned. Based on the conduct described, the above provider number is hereby being terminated / revoked.

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Baton Rouge, Louisiana 70821

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Sincerely,

Kathy Kliebert, Secretary
Louisiana Department of Health and Hospitals

Cc: Planned Parenthood Gulf Coast

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

September 15, 2015

Planned Parenthood
ATTN:Melaney Linton
3955 Government Street, Suite 2
Baton Rouge, Louisiana 70806

Certified Mail, Return Receipt Requested (7012 2210 0001 6260 0097)

Re: Termination / Revocation of Louisiana Medicaid Provider Agreement
Provider Number 133689

Dear Mrs. Linton:

Based on the initial findings of Louisiana's investigation into Planned Parenthood Gulf Coast (PPGC), you are hereby notified that the Department of Health and Hospitals (DHH) is hereby terminating / revoking the PPGC provider agreement referenced above. This action is being taken pursuant to La. R.S. 46:437.11 and 46:437.14. This action will take effect following final determination, judgment, completion, withdrawal from, or termination of all administrative and/or legal proceedings in this matter. Such proceedings include, but are not limited to, informal hearings, administrative appeals, appeals for judicial review, appellate judgments, and/or denials of writ applications.

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Sincerely,

Kathy Kliebert

Kathy Kliebert, Secretary
Louisiana Department of Health and Hospitals

Cc: Planned Parenthood Gulf Coast

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

September 15, 2015

Planned Parenthood
ATTN:Melaney Linton
4600 Gulf Hwy.
Houston, TX 77023

Certified Mail, Return Receipt Requested (7012 2210 0001 6260 0073)

Re: Termination / Revocation of Louisiana Medicaid Provider Agreement
Provider Number 45802

Dear Mrs. Linton:

Based on the initial findings of Louisiana's investigation into Planned Parenthood Gulf Coast (PPGC), you are hereby notified that the Department of Health and Hospitals (DHH) is hereby terminating / revoking the PPGC provider agreement referenced above. This action is being taken pursuant to La. R.S. 46:437.11 and 46:437.14. This action will take effect following final determination, judgment, completion, withdrawal from, or termination of all administrative and/or legal proceedings in this matter. Such proceedings include, but are not limited to, informal hearings, administrative appeals, appeals for judicial review, appellate judgments, and/or denials of writ applications.

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Baton Rouge, Louisiana 70821

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Sincerely,

Kathy Kliebert

Kathy Kliebert, Secretary
Louisiana Department of Health and Hospitals

Cc: Planned Parenthood Gulf Coast

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

September 15, 2015

Planned Parenthood
ATTN:Melaney Linton
4018 Magazine Street
New Orleans, LA 70115

Certified Mail, Return Receipt Requested (7012 2210 0001 6260 0066)

Re: Termination / Revocation of Louisiana Medicaid Provider Agreement
Provider Number 133673

Dear Mrs. Linton:

Based on the initial findings of Louisiana's investigation into Planned Parenthood Gulf Coast (PPGC), you are hereby notified that the Department of Health and Hospitals (DHH) is hereby terminating / revoking the PPGC provider agreement referenced above. This action is being taken pursuant to La. R.S. 46:437.11 and 46:437.14. This action will take effect following final determination, judgment, completion, withdrawal from, or termination of all administrative and/or legal proceedings in this matter. Such proceedings include, but are not limited to, informal hearings, administrative appeals, appeals for judicial review, appellate judgments, and/or denials of writ applications.

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Sincerely,

Kathy Kliebert, Secretary
Louisiana Department of Health and Hospitals

Cc: Planned Parenthood Gulf Coast

TESTIMONY

BEFORE THE HEALTH SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON

"PROTECTING INFANTS: ENDING TAXPAYER FUNDING FOR ABORTION PROVIDERS WHO VIOLATE THE LAW"

BY

M. CASEY MATTOX
SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM

SEPTEMBER 17, 2015

Despite providing only a limited selection of medical services,[1] Planned Parenthood annually receives over a half billion in taxpayer dollars.[2] Last year alone, the non-profit also reported $127 million "excess revenue."[3] Over the last ten years, while its Medicaid funding has increased and it has accumulated approximately $750 million in "excess revenue,"[4] Planned Parenthood has reduced its cancer screenings by half[5] and increased its abortions, even as the national abortion rate has declined. Planned Parenthood receives taxpayer dollars from multiple revenue streams (*e.g.*, federal funds flow through state and regional health agencies to Planned Parenthood affiliates, primarily through several provisions of the Social Security Act: Temporary Assistance to Needy Families (TANF) (Title IV); Maternal and Child Health Services Grants (Title V); the Federal Family Planning Program (Title X); Medicaid Family Planning (Title XIX) and the Social Security Block Grant Program (Title XX)),[6] but the great majority of Planned Parenthood's taxpayer funding comes from Medicaid.

Yet, Planned Parenthood is unlike many other Medicaid providers. Not only has it had great financial success as a Medicaid provider, but also it has been able to avoid much of the oversight and/or corrective action that most Medicaid providers would expect and have received.

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[1] *See* http://www.plannedparenthood.org/ for a list of the limited services that Planned Parenthood provides (last visited Sept. 15, 2015).
[2] *See, e.g.*, http://issuu.com/actionfund/docs/annual_report_final_proof_12.16.14_/0 (last visited Sept. 15, 2015).
[3] *Id.*
[4] *See* Planned Parenthood Federation of America Annual reports 2004 – 2014.
[5] Compare Planned Parenthood Federation of America's 2004-2005 Annual Report to Planned Parenthood Federation of America's 2013-2014 Annual Report.
[6] *See* Alan Guttmacher Institute, *Public Funding for Contraceptive, Sterilization and Abortion Services,* https:/ /www .guttmacher.org/pubs/Public-Funding-FP-2010.pdf (last visited Sept. 15, 2015).

Moreover, between local affiliates and the national organization, Planned Parenthood has spent many millions of dollars to support the election of its preferred candidates.[7]

In the wake of the videos released by the Center for Medical Progress ("CMP"), many states are now re-examining Planned Parenthood affiliates and their participation in their state Medicaid programs. The videos appear to show evidence of violations of federal and state laws as well as serious ethical concerns. This only adds to the mounting evidence of waste, abuse and potential fraud, the failure to report suspected statutory rape and sex trafficking, and other violations of state and federal laws.

States considering termination of Medicaid Provider Agreements with Planned Parenthood are well within their rights. Actions being considered by Congress may further clarify that it is the states who are empowered to conduct their own Medicaid programs and that the federal government or the courts may not compel them to qualify providers that violate federal or state law, act unethically, or which the state concludes are otherwise not suitable for participation in its Medicaid program.

To understand the rights and obligations states have when they choose to terminate Planned Parenthood's participation in their state Medicaid programs, it is necessary to briefly review the structure of the Medicaid program and states' responsibilities for developing and administering their own programs, including determination of the provider qualifications. I will also address the obstacles states have faced and are facing from the current Administration in choosing to disqualify Planned Parenthood from their state Medicaid programs, as well as the grounds states have to terminate Planned Parenthood from Medicaid.

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[7] Planned Parenthood gave $18 million to political action committees in 2014 and 2012, according to the Center for Responsive Politics. Most of its nearly $6 million in direct contributions since 1990 have gone to pro-abortion candidates. *See, e.g.*, https://www.opensecrets.org/orgs/summary.php?id=D000000591&cycle=2014 (last visited Sept. 15, 2015); https://www.opensecrets.org/orgs/summary.php?id=D000000591&cycle=2012 (last visited Sept. 15, 2015); https://www.opensecrets.org/orgs/totals.php?id=D000000591&cycle=2014 (last visited Sept. 15, 2015).

I. The Role of States in Medicaid

Medicaid is a federal-state cooperative program that subsidizes states' provision of medical services to "families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1. The federal government shares the costs of Medicaid with states that elect to participate in the program. In return, participating states agree to comply with requirements imposed by the Medicaid Act.[8]

The states operate their own state Medicaid programs within federal guidelines. On the federal level, Congress has delegated the authority to regulate these state-administered programs to the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services ("CMS"). Each state develops its own Medicaid plan to serve the needs of its citizens. CMS then evaluates and approves these state plans, *i.e.*, a "state approved plan" or "SAP," by which a state agency administers the program.[9]

The Medicaid program guarantees states "flexibility in designing plans that meet their individual needs" and "considerable latitude in formulating the terms of their own medical assistance plans." *Addis v. Whitburn*, 153 F.3d 836, 840 (7th Cir. 1998) (citing *Dandridge v. Williams*, 397 U.S. 471, 487 (1970)). States enjoy "considerable autonomy" under Medicaid to "select dramatically different levels of funding and coverage, alter and experiment with different financing and delivery modes, and opt to cover (or not to cover) a range of particular procedures and therapies. States have leveraged this policy discretion to generate a myriad of dramatically different Medicaid programs over the past several decades." *National Federation of Independent Businesses v. Sebelius,* 132 S.Ct. 2566, 2632 (2012) (Ginsburg, J., concurring in part and

[8] The Medicaid Act is found in Title XIX of the Social Security Act, 42 U.S.C. §§1396–1396v. Regulations relating to the Medicaid Act are contained in Chapter IV, Title 42 and subtitle A, Title 45 Code of Federal Regulations.
[9] *See* 42 C.F.R. § 431.10.

dissenting in part), quoting Ruger, *Of Icebergs and Glaciers*, 75 LAW & CONTEMP. PROBS. 215, 233 (2012). This flexibility and wide latitude reflects the fact that when a state acts within its core or natural sphere of operation, such as regulating medical care,[10] or expends its own funds as a state does in providing its cooperative share for Medicaid, attention to the principles of federalism is all the more critical.

In keeping with this wide latitude for state authority, Medicaid regulations permit states to establish "reasonable standards relating to the qualifications of providers." 42 C.F.R. § 431.51(c)(2).

II. Disqualification or Exclusion of Medicaid Providers.

Termination of a provider from the program, or "exclusion" as CMS refers to it (*see* 42 U.S.C. § 1396a(p)(3) ("As used in this subsection, the term 'exclude' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.")), occurs when a state Medicaid program revokes a Medicaid provider's billing privileges, and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired. Consistent with the states' role in determining the qualification of providers in their state Medicaid programs – and regulating the practice of medicine within the state generally, CMS ordinarily defers to state law regarding terminations. In the relatively rare cases in which a provider's termination from the state Medicaid program has been challenged, courts have also typically deferred to state decisions to terminate Medicaid providers from their state Medicaid programs.

While Medicaid vests the responsibility of determining provider qualification with the states, it also authorizes the federal government to exclude providers in some cases. Federal law

[10] *Pa. Med. Soc'y v. Marconis*, 942 F.2d 842, 847 (3d Cir. 1991) ("The licensing and regulation of physicians is a state function . . . . Thus, the state regulation is presumed valid. To rebut this presumption, appellants must show that Congress intended to displace the state's police power function.").

enumerates circumstances under which the federal Secretary of HHS *must* terminate a Medicaid provider. These include conviction for program-related crimes (42 U.S.C. § 1320a-7(a)(1)); conviction related to patient abuse or neglect (42 U.S.C. § 1320a-7(a)(2)); felony conviction for health care fraud (42 U.S.C. § 1320a-7(a)(3)); and felony conviction relating to controlled substances (42 U.S.C. § 1320a-7(a)(4)).[11]

The Medicaid statute also provides grounds for which the U.S. Department of Health and Human Services, in its discretion, may exclude a provider.[12] These include claims for excessive charges, unnecessary services, or services which fail to meet professionally recognized standards of health care (42 U.S.C. § 1320a-7(b)(6)); fraud, kickbacks, and other prohibited activities (42 U.S.C. § 1320a-7(b)(7)); entities controlled by a sanctioned individual (42 U.S.C. § 1320a-7(b)(8)); failure to disclose required information, supply requested information, or supply payment information (42 U.S.C. § 1320a-7(b)(9)-(11)); sanctioned individuals controlling an entity (42 U.S.C. § 1320a-7(b)(15)); and making false statements or misrepresentations of material fact (42 U.S.C. § 1320a-7(b)(16)). The Secretary may also exclude when a provider has not complied with its obligation to ensure that services or items "will be provided economically and only when, and to the extent, medically necessary;" "will be of a quality which meets professionally recognized standards of health care;" and "will be supported by evidence of medical necessity and quality…." 42 U.S.C. § 1320c-5.

The powers of a state Medicaid program to exclude a provider are broader than those of the federal government. A state Medicaid program may also exclude a health care provider from participation "for any reason for which the Secretary could exclude the [provider] from

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[11] *See* generally, HHS OIG, Exclusion Authorities, *available at* http://oig.hhs.gov/exclusions/authorities.asp (last visited Sept. 15, 2015).

[12] These include 42 U.S.C. §§ 1320a-7(b)(1)(A) and (B); 1320a-7(b)(2)-(8); 1320a-7(b)(8)(A); 1320a-7(b)(9)-(16); and 1320c-5. *See* HHS OIG, *Exclusion Authorities*, *supra* n13.

participation" (*i.e.*, the grounds for discretionary exclusion enumerated above) "*[i]n addition* to any other authority." 42 U.S.C. § 1396a(p)(1) (emphasis added). The phrase "[i]n addition to any other authority" "permit[s] a state to exclude an entity from its Medicaid program *for any reason established by state law.*" *First Med. Health Plan v. Vega-Ramos*, 479 F.3d 46, 53 (1st Cir. 2007) (emphasis added).

The First Circuit observed that the legislative history of the Medicaid Act rejected a narrower view of the state's power to disqualify providers.

> The [Medicaid exclusion] statute expressly grants states the authority to exclude entities from their Medicaid programs for reasons that the Secretary could use to exclude entities from participating in Medicare. But it also preserves the state's ability to exclude entities from participating in Medicaid under 'any other authority.' The legislative history clarifies that this 'any other authority' language was intended to permit a state to exclude an entity from its Medicaid program for *any* reason established by state law. The Senate Report states:
>
> The Committee bill clarifies current Medicaid Law by expressly granting states the authority to exclude individuals or entities from participation in their Medicaid programs for any reason that constitutes a basis for an exclusion from Medicare. . . . *This provision is not intended to preclude a state from establishing, under state law, any other bases for excluding individuals or entities from its Medicaid program.*

Id. (emphasis by the court) (*quoting* S. Rep. 100-109, reprinted in 1987 U.S.C.C.A.N. at 700). Thus, consistent with principles of federalism and the sovereign right of states to regulate the medical profession within their borders and to expend their own taxpayers' funds, states have congruent authority with the federal government to terminate providers for reasons that would satisfy the Secretary, as well as their own authority to exclude providers for violations of state law.

State statutes implementing this authority provide for exclusion based on license revocation by the state licensing agency; refusal to grant access to Medicaid-related records to the state Department or Auditor; provision of goods or services that are unnecessary or of

inferior quality; false claims or statements; or being found liable for neglect of patients resulting in death or injury.[13] Numerous courts have upheld the exercise of this broad authority for many reasons that advance state law and policy, including suspected fraud (*Guzman v. Shewry*, 552 F.3d 941, 950 (9th Cir. 2009); conflicts of interest (*Vega-Ramos*, 479 F.3d at 49-50); engaging in industrial pollution (*Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577, 578-79 (2d Cir. 1989)); and inadequate record-keeping (*Triant v. Perales*, 491 N.Y.S.2d 486, 488 (N.Y. App. Div. 1985)). Medicaid providers are also subject to other state laws regulating medical providers, including health and safety standards, informed consent requirements, mandatory reporting for sexual abuse of minors, and other similar laws. Violations of these state laws may also result in termination of a provider's Medicaid agreement.

III. Administration Action to Diminish State Authority Over Their Medicaid Programs

In 2011, Indiana, concerned that state taxpayer dollars indirectly support abortion when abortionists participate in the state Medicaid program, determined that abortionists would not be qualified as providers under Indiana's Medicaid program.[14] With Planned Parenthood immediately launching litigation against the state, CMS issued a new interpretation of 42 U.S.C. §1396a(a)(23) that purports to limit states' authority to set qualifications of providers on the ground that doing so would deny an individual a "free choice of [] provider." CMS has recently sent letters to some states after they chose to disqualify Planned Parenthood as a provider pursuant to the terms of their Medicaid Provider Agreement. CMS asserts that the actions violate its interpretation of the "free choice of [] provider" provision.

Section 1396a(a)(23) of the Medicaid Act provides that Medicaid patients may obtain medical services "from any institution, agency, community pharmacy, or person, qualified to

[13] Alice G. Gosfield, MEDICARE AND MEDICAID FRAUD AND ABUSE § 4:15 (2015).
[14] Arizona later took a very similar action for the same reasons.

perform the service or services required . . . who undertakes to provide him such services." This "free choice of qualified provider" provision – inaccurately, but frequently, referred to as the "free choice of [] provider," provision by the current CMS and Planned Parenthood – gives Medicaid patients "the right to choose among a range of qualified providers, without government interference." *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 785 (1980).

In the wake of this CMS interpretation, the Seventh and Ninth Circuits have held on the basis of the Medicaid "free choice of qualified provider" provision that states may not exclude an entire *class* of otherwise qualified family planning service providers from participation in a Medicaid program on the basis that the class of providers performed induced abortions.[15] These circuits held that state Medicaid programs may not disqualify a "class" of providers based on their "scope of service," namely their participation in providing elective abortion. But both before and even after these decisions, Courts have made clear that when a State disqualifies an individual provider under either federal or state law, or because of concerns about ethics, safety, or professional competency, the termination should be upheld. *Planned Parenthood of Ind. v. Comm'r*, 699 F.3d 962, 968 (7th Cir. 2012), *cert. den.*, 133 S.Ct. 2738 (2013) ("Indiana has **broad authority to exclude unqualified providers** from its Medicaid program," including whether the state believes they cannot provide services in a "professionally **competent, safe, legal**, and **ethical** manner.").

Exclusion of Medicaid providers for a variety of reasons is relatively common and rarely challenged. According to the HHS Office of the Inspector General, over 9,000 providers have been excluded as Medicaid providers over the last two decades.[16] Exclusion of a Medicaid

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[15] *Planned Parenthood of Az., Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013), cert. den., 134 S.Ct. 1283 (2014); *Planned Parenthood of Indiana, Inc. v. Commr., Indiana State Dept. of Health*, 699 F.3d 962 (7th Cir. 2012), cert. den., 133 S.Ct. 2738 (2013).

[16] *See* http://oig.hhs.gov/exclusions/index.asp (last visited Sept. 15, 2015).

provider is thus nothing new. It is a common experience for states to suspend or terminate a Medicaid provider's participation in the program. Medicaid providers cannot usually rely upon the support of the federal government – including reinterpretation of the Medicaid Act – when a state disqualifies them from its state Medicaid program. Planned Parenthood is a unique case.

Where a state has cause, under state or federal law or for ethical reasons, to exclude an individual provider, there should be little doubt that the state may terminate its Medicaid agreement with such a provider. Neither the *Betlach* nor *Planned Parenthood of Ind.* decisions suggest otherwise.

Finally, it should be noted that the disqualification of Planned Parenthood from any state Medicaid program would not deny anyone a meaningful choice of providers. Planned Parenthood represents a very small part of the Medicaid-eligible providers in every state. And in some states like Louisiana, Arkansas and Alabama, which have already terminated their Medicaid Provider Agreements with Planned Parenthood, Planned Parenthood has only two locations in each state. By comparison, there are 294 Federally Qualified Health Center and Rural Health Clinic delivery sites in Louisiana, 234 in Alabama, and 179 in Arkansas. Nationally, there are over 13,000 FQHC sites and RHC sites providing primary care and more comprehensive care overall than Planned Parenthood offers.[17] These maps do not even include the thousands of private physicians who also accept Medicaid. Fewer than 2% of all women actually use Planned Parenthood for any service in any given year.[18] And even those women must also seek care elsewhere for any services beyond those limited services Planned Parenthood

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[17] *See* https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/mlnProducts/Downloads/rhclistbyprovidername.pdf (last visited Sept. 15, 2015) and http://datawarehouse.hrsa.gov/Data/datadownload/hccDownload.aspx (last visited Sept. 15, 2015). Federally Qualified Health Clinics ("FQHC") and "Look Alikes" provide primary and preventive medical care and enabling services. Rural Health Clinics also offer primary and preventive medical services.

[18] *See* http://www.politifact.com/truth-o-meter/statements/2015/jul/31/harry-reid/harry-reid-says-30-women-rely-only-planned-parenth/ (last visited Sept. 15, 2015).

offers. Termination of Planned Parenthood from any state's Medicaid program would not meaningfully limit the choice of a wide range of Medicaid providers.

IV. Potential Bases of Termination for Cause.

States considering termination of Planned Parenthood's Medicaid agreement may have several bases to do so – stemming from the videos and also from other violations of state and federal laws. As discussed above, states have "broad authority to exclude unqualified providers from [their] Medicaid program[s]," where the state lacks confidence that the provider is "capable of performing the needed medical services in a professionally competent, safe, **legal**, and **ethical** manner." *Planned Parenthood of Ind.*, 699 F.3d at 978 (emphasis added). A few of those examples are discussed below. Other Medicaid providers in Planned Parenthood's position, but lacking the active support of the Administration, would not be surprised to find that a state had terminated their Medicaid Provider Agreement.

1. Pending Investigation.

States may terminate a medical provider during a pending investigation. *Guzman*, 552 F.3d at 949. *Guzman* demonstrates the broad authority which states have to set reasonable standards for participation in Medicaid, and the latitude that states enjoy to exclude providers under state law. In 2006, the California Department of Health Care Services opened an investigation into certain potentially fraudulent claims. Guzman, an obstetrician/gynecologist, had submitted for payment claims for large quantities of intrauterine devices ("IUDs") from Mexico which were not approved by the FDA for use in the United States. Guzman argued that federal law prohibited States from suspending providers from a state health care program simply because the provider is "under investigation" for fraud or abuse. The Ninth Circuit, however, disagreed, noting that "[t]he Medicaid statutes contain 'no explicit preemptive language' limiting

the grounds upon which a state may suspend a provider from a state health care program" and that "nothing in the federal Medicaid statutes or regulations prevents a state from suspending a provider temporarily from a state health care program on the basis of an ongoing investigation for fraud or abuse." 552 F.3d at 949-50. The Court concluded that because Medicaid refers to "other authority" to exclude retained by the States, "[t]his provision plainly contemplates that states have the authority to suspend or to exclude providers from state health care programs for reasons other than those upon which the Secretary of HHS has authority to act." *Id.* "[N]ot only does the applicable federal statute fail to prohibit states from suspending providers from state health care programs for reasons other than those upon which the Secretary of HHS may act, the governing regulation specifically instructs that states have such authority." *Id.* at 950.

Planned Parenthood affiliates and clinics are, of course, the subject of ongoing investigations in numerous states and by several congressional committees. States may suspend Medicaid payments to Planned Parenthood affiliates during these investigations into violations of state and federal law.

2. Fiscal Fraud, Waste and Abuse.

Alliance Defending Freedom issues an annual report to Congress compiling and detailing the known public government audits of Planned Parenthood waste, abuse, and potential fraud involving taxpayer funds.[19] The report details several dozen known public audits of Planned Parenthood affiliates that have uncovered waste, abuse, and potential financial fraud, and suggests that Planned Parenthood and its affiliates are engaged in a pattern of practices designed

[19] *Profit. No Matter What. Alliance Defending Freedom's Annual Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs*, July 23, 2014, *available at* http://www.adflegal.org/detailspages/press-release-details/adf-congressional-report-exposes-planned-parenthood-s-ongoing-taxpayer-abuse (last visited Sept. 15, 2015).

to maximize their revenues through billings to these complex programs that rely on the integrity of the provider for program compliance.

Forty-four known but scope-limited public audits of Planned Parenthood affiliates in just nine states have revealed over $8 million in overpayments to Planned Parenthood from the Medicaid program. Additionally, another fifty-one limited federal audits of state family planning programs have also identified another $107 million in overbilling. These also demonstrated that in many cases federal taxpayer dollars are paying for abortions despite claims to the contrary. The federal audits detailed "unbundling" billing schemes related to pre-abortion examinations, counseling visits, and other services performed in conjunction with an abortion; and improper billing for the abortions themselves.[20]

In New York, alone, during one four-year audit period, it appeared that hundreds of thousands of abortion-related claims were billed unlawfully to Medicaid. While these federal HHS-OIG audits do not usually identify specific providers, two of these federal audits specifically identified Planned Parenthood as overbilling the state family planning program. Moreover, seven of the federal HHS-OIG audits were of New York State and found federal overpayments in excess of $32 million to the New York State Medicaid family planning program. These audits likely led to the seven state audits of New York Planned Parenthood affiliates. Thirteen months after the federal audit of NewYork State that identified "especially Planned Parenthoods" as incorrectly claiming services as family planning, New York State released its first known audit report of a Planned Parenthood affiliate.[21]

Moreover, in *United States ex. rel. Reynolds v. Planned Parenthood Gulf Coast*, No. 9:09-cv-124 (E.D. Tex.), the Planned Parenthood affiliate paid $4.3 million to settle a False

[20] *Id.*, Supra n. 19.
[21] *Id.*

Claims Act lawsuit by a former employee alleging Medicaid fraud. The Justice Department intervened in the lawsuit to prosecute the violations. The settlement agreement states:

> "The United States contends that PPGC submitted false claims and made false statements to the United States in connection with claims PPGC submitted to the United States" under Medicaid and other programs.[22]

Other Planned Parenthood clinic directors have also filed lawsuits under the False Claims Act alleging many millions more in Medicaid fraud.[23] For example, Sue Thayer is a former Planned Parenthood clinic director who worked for seventeen years in Iowa Planned Parenthood clinics. She alleged over $20 million dollars in Medicaid fraud by Planned Parenthood of the Heartland. The United States Court of Appeals for the Eighth Circuit held last year that her claims could proceed, holding:

> [W]e conclude that Thayer has pled sufficiently particularized facts to support her allegations that Planned Parenthood violated the FCA by filing claims for (1) unnecessary quantities of birth control pills, (2) birth control pills dispensed without examinations or without or prior to a physician's order, (3) abortion-related services, and (4) the full amount of services that had already been paid, in whole or in part, by 'donations' Planned Parenthood coerced from patients.

U.S. ex. rel. Thayer v. Planned Parenthood of the Heartland, 765 F.3d 914 (8th Cir. 2014).

Confirming that these are not isolated incidents, seven former Planned Parenthood employees informed the House Energy and Commerce Subcommittee on Oversight and Investigations in another investigation that "PPFA failed to properly account for and maintain separation between government funds prohibited from use for elective abortions and [other,

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[22] *See* Settlement Agreement in *United States ex. rel. Reynolds v. Planned Parenthood Gulf Coast*, available at http://www.scribd.com/doc/157465464/Planned-Parenthood-Gulf-Coast-4-3-Million-Settlement-Agreement-with-Government (last visited Sept. 15, 2015).

[23] *See, e.g., United States ex. rel. Susan Thayer v. Planned Parenthood of the Heartland*, 765 F.3d 914 (8th Cir. 2014); *see also http://www.adfmedia.org/News/PRDetail/5395* (last visited Sept. 15, 2015).

unrestricted] funds...."[24] Further, "PPFA failed to engage in appropriate financial controls and billing practices to ensure compliance with applicable state and federal laws."[25]

State Medicaid determinations that a provider committed Medicaid fraud or submitted wasteful claims are a valid basis for disqualifying any provider, including Planned Parenthood, from participation in state Medicaid programs.

3. Failure to Make Mandatory Reports of Minor Sexual Abuse.

All fifty states and U.S. territories and the District of Columbia require reporting of suspected neglect or abuse of children, including sexual abuse.[26] These reporting laws typically include statutory rape.[27] Medical professionals are almost always specifically included in statutory lists of mandatory reporters of suspected abuse or neglect of children.[28]

Despite these state laws, Planned Parenthood affiliates across the country have repeatedly demonstrated a willful refusal to protect children from sexual predators. Alliance Defending Freedom's report, "How Planned Parenthood 'Cares' for Child Victims of Sexual Abuse: A Summary of Planned Parenthood Failing to Report Sexual Abuse,"[29] documents numerous reports of civil and criminal actions in seven states that involve Planned Parenthood apparently covering up or enabling statutory rape. Most recently, a Planned Parenthood location in Mobile, Alabama failed to report the suspected sexual abuse of a 14 year-old, who came to Planned

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[24] Letter from Catherine Adair et al., Former Employees of Planned Parenthood Affiliates, to Fred Upton, Chairman, U.S. House of Representatives Energy and Commerce Committee, & Henry Waxman, Ranking Member, U.S. House of Representatives Energy and Commerce Committee (Dec. 7, 2011), *available at* http://www.sba-list.org/suzy-b-blog/former-planned-parenthood-employees-speak-out (last visited Sept. 15, 2015).

[25] *Id.*

[26] *See* http://www.ncsl.org/research/human-services/redirect-mandatory-rprtg-of-child-abuse-and-neglect-2013.aspx (last visited Sept. 15, 2015).

[27] The Lewin Group, *Statutory Rape: A Guide to State Laws and Reporting Requirements*, prepared for the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Dec. 15, 2004, p.14.

[28] According to the National Conference of State Legislatures, the laws in 48 states, in addition to U.S. territories, list groups of individuals who are required to report include health-care providers; New Jersey and Wyoming do not provide a specific list of professionals required to report. *See* http://www.ncsl.org/research/human-services/child-abuse-and-neglect-reporting-statutes.aspx (last visited Sept. 15, 2015).

[29] *See* http://www.adfmedia.org/News/PRDetail/9746.

Parenthood for two abortions in a 5 month period last year.[30] In Ohio, another 14 year-old girl was impregnated by her adult soccer coach, and Planned Parenthood performed an abortion without the notification or consent of either of her parents. The coach was later found guilty of 7 counts of sexual battery.[31]

Live Action, through its undercover investigations, has repeatedly caught Planned Parenthood employees deliberately ignoring age disparities between young girls and the men who prey on them, advising the girls not to disclose to them the age of the men, or instructing minors how to circumvent parental notification laws.[32] Several years ago, Life Dynamics also conducted undercover calls to Planned Parenthood affiliates with similar shocking results.[33]

Sex trafficking also appears to be a nationwide problem that Planned Parenthood has washed its hands of. Statistics from the Department of Justice indicate that over 100,000 children in the U.S. fall victim to sex-trafficking each year, and 300,000 to 400,000 American children are involved in some form of sex-trafficking annually.[34] Live Action videos documented seven Planned Parenthood clinics in four different states willing to aid and abet the sex-trafficking of minor girls by supplying confidential birth control, STD testing, and secret abortions to underage girls and their traffickers.[35]

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[30] *Id.*
[31] *Id.*
[32] *See* http://www.lifesitenews.com/news/vindicated-live-action-busted-indy-planned-parenthood-for-covering-up-statu. Several videos of these undercover operations can be viewed at http://www.liveaction.org/monalisa/ (last visited Sept. 15, 2015).
[33] Life Dynamics maintains copies of the recorded calls and transcripts from its investigation on its website, as well as an excellent report on this subject, including examples from Planned Parenthood and other abortion businesses. *See* http://www.childpredators.com/the-child-predator-report/ (last visited Sept. 15, 2015).
[34] *See* http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited Sept. 15, 2015).
[35] Live Action, "Trafficking Project," *available at* http://liveaction.org/download-live-action-videos/ (last visited Sept. 15, 2015).

4. Violations of Federal Laws Relating to Fetal Tissue Procurement.

As previously noted, a state's finding that a Planned Parenthood affiliate has failed to act in an ethical manner may also support a state's exclusion of that provider. Numerous recent reports of Planned Parenthood affiliates engaged in the practice of post-abortion fetal organ harvesting, the involvement of national Planned Parenthood officials in this practice, and misleading government officials regarding this conduct may provide the basis for exclusion.

42 U.S.C. §289g-2 states "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration. The law narrowly exempts certain "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue." Further, although 42 U.S.C. §289g-1 allows the federal government to "conduct or support research on the transplantation of human fetal tissue for therapeutic purposes," this statute specifically requires informed consent by the woman for whom the abortion is being performed, as well as all of the researchers who receive the fetal tissue. And it strictly prohibits any "alteration of the timing, method, or procedures used to terminate the pregnancy . . . solely for the purposes of obtaining the tissue."[36]

While Planned Parenthood claims that it only receives reimbursement for expenses, there is substantial evidence – from the videos and otherwise – that Planned Parenthood was receiving payments that more than compensated any actual expenses. First, Stem Express, the for-profit organ harvesting company with which Planned Parenthood affiliates in California were working, publicly claimed that it was providing "fiscal rewards" and "financial profits" to abortion clinics

[36] *See* Hans von Spakovsky, "The Justice Department Needs to Investigate Planned Parenthood, National Review Online, Jul. 31, 2015, *available at* http://www.nationalreview.com/article/421870/ planned-parenthood-videos-criminal-investigation-loretta-lynch (last visited Sept. 15, 2015).

in its marketing materials endorsed by Planned Parenthood executives.[37] This is a company that had an ongoing contractual relationship with Planned Parenthood in its own words, in a flyer bearing the endorsement of Planned Parenthood.

Moreover, there appears to be no dispute that Planned Parenthood was not transporting organs or storing them for Stem Express. Rather, Stem Express employees came to Planned Parenthood locations, harvested the organs they wanted, and left with them themselves. While Planned Parenthood officials and defenders have continued to repeat that the payments they received only covered costs for "transportation," "packaging," and other expenses they have not explained how they would have any expenses for these items given Stem Express's on site procurement methods. Cecile Richards has conceded that Planned Parenthood was receiving $60 payments for each harvested organ,[38] but has made no attempt to actually connect this payment to any permissible reimbursable expenses. The CMP videos only confirm these facts. In multiple videos Planned Parenthood officials are negotiating prices for organs. At best they acknowledge a need to find a price they can defend, but not one that actually reimburses them for actual statutorily specified expenses.

Cecile Richards also acknowledged to Congress that its abortionists will "adjust" abortion procedures in order to obtain specimens. Federal law prohibits alteration of the timing or methods of abortion procedures for this purpose. 42 U.S.C. §289g-1. This law protects women from being coerced into more dangerous abortion procedures for the financial benefit of a for-profit harvesting company like Stem Express and even an ostensible non-profit like Planned Parenthood. The CMP videos further confirm the fact that Planned Parenthood is altering abortion procedures through "less crunchy" methods to obtain better and more salesworthy

[37] *See* http://goo.gl/DRBbf2 (last visited Sept. 15, 2015).
[38] *See* Cecile Richards' Letter to Congress, dated August 27, 2015.

specimens.[39]Indeed, in one video the method described by Deborah Nucatola, PPFA's Senior Director of Medical Services, seems to imply the use of Partial Birth Abortion to obtain better and more useful samples.40 Yet, as CMP has also revealed, in apparent recognition of its obligations under federal law, Planned Parenthood's own consent forms expressly tell the woman that "there will be **no changes** to how or when my abortion is done in order to get my blood or the tissue."41 (emphasis supplied). However, Planned Parenthood's own president, Cecile Richards, admits in her letter to Congress that Planned Parenthood physicians alter abortion procedures in order to "facilitate fetal tissue donation."[42] Not only does the available evidence suggest that Planned Parenthood may be receiving illegal compensation for the organs it is selling and illegally and unethically changing abortion methods to obtain those samples, it appears it has also mislead women into consenting for the use of the remains of their unborn child's body parts using false information.

State Medicaid programs are empowered to disqualify providers who violate federal and state laws and ethical norms.

5. Violations of the Partial Birth Abortion Ban Act and the Born Alive Infant Protection Act.

Federal law prohibits partial-birth abortions except where necessary to save the mother's life. 18 U.S.C. § 1531.[43] Comments from Deborah Nucatola, Senior Medical Director of Planned

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[39] *See* http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PPFA020615_transcript.pdf (last visited Sept. 15, 2015).

[40] *See* http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PPFAtranscript072514_final.pdf (last visited Sept. 15, 2015).

[41] Planned Parenthood Consent Form for Fetal Tissue, http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PP-Mar-Monte-tissue-consent.pdf (last visited Sept. 15, 2015).

[42] *See* page 7 of Cecile Richard's Letter to Congress, dated August 27, 2015.

[43] The Partial-Birth Abortion Ban Act contains no health exception. When the Supreme Court considered the constitutionality of the Partial-Birth Abortion Ban Act in 2006, Planned Parenthood and other abortionists argued that approximately 2200 partial-birth abortions per year were *necessary* for health reasons. When the Supreme Court issued its opinion in April 2007, it held that the law was generally constitutional. However, the Court invited any

Parenthood Federation of America, raise serious questions about whether Planned Parenthood is complying with the Partial Birth Abortion Ban Act. She describes altering the presentation of a later term unborn child to perform the abortion in such a way as to permit the delivery of the head intact.[44] Nucatola also says that some abortionists choose to use a drug called digoxin because it gives them plausible deniability if a partial-birth abortion occurs in that they can point to the use of digoxin to show that they did not intend to violate the Partial Birth Abortion Ban Act.

> The Federal [Partial Birth] Abortion Ban is a law, and laws are up to interpretation. So there are some people who interpret it [the use of digoxin] as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1 so I'm complying with the law.[45]

These comments raise serious questions about Planned Parenthood's compliance with the federal Partial Birth Abortion Ban Act and similar state laws.

Federal law also extends legal protection to a child born after an attempted abortion. 1 U.S.C. §8. Numerous comments captured by CMP illustrate possible violations of the Born Alive Infant Protection Act. In response to the question, "is there still circulation in the heart once you isolate it?," Dr. Ben Van Handel, Executive Director of Novogenix Laboratories said, "**So you know there are times when after the [abortion] procedure is done that the heart**

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abortionist or woman filing a new challenge to show why a partial-birth abortion was necessary in one of those 2200-per-year instances. Planned Parenthood warned of consequences for women's health from the decision, just as Justice Ginsburg wrote in a dissent: "One may anticipate that such a preenforcement challenge will be mounted swiftly, to ward off serious, sometimes irremediable harm, to women whose health would be endangered by the intact D&E prohibition." Eight years later, no such complaint has been filed and thus it appears that there was no basis for the claims that this procedure was necessary for health reasons in any case, much less 2200 such cases per year. One possible explanation for the lack any as applied challenge to the Partial Birth Abortion Ban Act is revealed by Dr. Nucatola's comments – the possibility that abortionists are continuing to perform the prohibited procedures while giving themselves plausible deniability as to "intent" should they be discovered.

[44] *See* http://www.centerformedicalprogress.org/cmp/investigative-footage/ (last visited Sept. 15, 2015).

[45] Id.

actually is still beating."[46] Former Stem Express employee Holly O'Donnell also testified that she personally witnessed a child delivered after an abortion and whose heart would still beat when prompted by a technician.[47] Other comments captured by the videos describe the delivery of fully intact fetuses, raising the prospect of violations of the Born Alive Infant Protection Act and similar state laws.

Conclusion

The states are ultimately responsible for their state Medicaid programs and the providers they approve to participate in them. Even prior to the release of the videos by the Center for Medical Progress, many states had evidence of violations of state and federal laws that would have called into doubt the continuation of Medicaid Provider Agreements with any provider other than Planned Parenthood. Congress can and should reaffirm that the Administration may not coerce the states to contribute taxpayer monies to ethically and legally challenged organizations like Planned Parenthood.

[46] "Episode 3: Planned Parenthood's Custom Abortions for Superior Product, available at http://www.centerformedicalprogress.org/human-capital/documentary-web-series/ (last visited Sept. 15, 2015).
[47] *Id.*

Governor Interns

From: Kellie Fiedorek <KFiedorek@adflegal.org>
Sent: Monday, February 1, 2016 4:42 PM
To: Drew Snyder
Subject: amicus opportunity in Stormans v. Weisman
Attachments: Stormans v. Wiesman States Amici -circulation draft.pdf

Hi Drew,

I just wanted to make sure you had seen the attached States' amicus brief supporting cert in Stormans. AZ took lead in drafting, and so far MT, UT, and AL have joined (waiting to hear back from other states). I believe it is circulating within NAAG as well, but wanted to flag it for you. Is this something your office would want to sign on to, or could you forward to AG's office? It would be great if Mississippi joined.

You may be interested to know that the West Virginia Pharmacists Association has agreed to join a separate brief supporting certiorari in this case. That brief is being filed on behalf of 25+ state pharmacy associations (Mississippi has indicated a willingness to join, but has yet to return an engagement letter) and 4 national organizations, including the American Pharmacists Association and the National Alliance of State Pharmacists Associations. The pharmacists brief demonstrates that Washington's regulation is grossly out of step with industry standards and threatens the rights of pharmacists.

The brief must be filed by Friday, Feb 5, and I assume that AZ will add states to their brief until sometime late on Wednesday when it goes to the printer.

Thanks for considering this opportunity. Please let me know if you have any questions, or would like additional info. My cell is 202-905-6197.

Best,
Kellie

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

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Governor Interns

From: Drew Snyder <Drew.Snyder@governor.ms.gov>
Sent: Monday, July 11, 2016 4:35 PM
To: John Sauer; Jonathan Mitchell; jcampbell@adflegal.org
Subject: 10:30 A.M. Central Time Wednesday for Call with Governor Bryant

John, Jonathan, Jim – Please let me know if 10:30 A.M. Central Time Wednesday, July 11 works for you. Thanks drew

From: John Sauer [mailto:jsauer@jamesotis.com]
Sent: Monday, July 11, 2016 3:12 PM
To: Drew Snyder; Jonathan Mitchell; jcampbell@adflegal.org
Subject: RE: Conference Call with Governor Bryant Wednesday

Drew- Sounds great. Virtually any time on Wednesday would work for me. Thanks, John Sauer

From: Drew Snyder [mailto:Drew.Snyder@governor.ms.gov]
Sent: Monday, July 11, 2016 3:12 PM
To: John Sauer <jsauer@jamesotis.com>; Jonathan Mitchell <jmitchell@jamesotis.com>; jcampbell@adflegal.org
Subject: Conference Call with Governor Bryant Wednesday

Is there a mutually convenient time for the three of y'all on Wednesday to have a 15-minute conference call with Governor Bryant? He wanted a chance to speak with y'all and get introduced. He's coming back from a trip sooner than anticipated so most of his Wednesday is currently available.

Drew Snyder
Policy Director & Counsel
Office of Governor Phil Bryant
(601) 576-2902
Drew.Snyder@governor.ms.gov

Governor Interns

From: Drew Snyder <Drew.Snyder@governor.ms.gov>
Sent: Wednesday, August 3, 2016 10:00 AM
To: jcampbell@adflegal.org; Jonathan Mitchell; jsauer@jamesotis.com
Subject: Amicus Interest

John Eidsmore, Senior Counsel at the Foundation for Moral Law called our main line yesterday. The Foundation is interested in filing an amicus brief. John's cell number is 334-324-1812.

Drew Snyder
Policy Director & Counsel
Office of Governor Phil Bryant
(601) 576-2902
Drew.Snyder@governor.ms.gov

Governor Interns

From: Drew Snyder <Drew.Snyder@governor.ms.gov>
Sent: Monday, July 11, 2016 3:12 PM
To: jsauer@jamesotis.com; jmitchell@jamesotis.com; jcampbell@adflegal.org
Subject: Conference Call with Governor Bryant Wednesday

Is there a mutually convenient time for the three of y'all on Wednesday to have a 15-minute conference call with Governor Bryant? He wanted a chance to speak with y'all and get introduced. He's coming back from a trip sooner than anticipated so most of his Wednesday is currently available.

Drew Snyder
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